TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1900.

No. 582. 225.

THE UNITED STATES, APPELLANT,

vs.

WILLIAM T. EWING.

APPEAL FROM THE COURT OF CLAIMS.

FILED JANUARY 10, 1901.

(18017.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1900.

No. 532.

THE UNITED STATES, APPELLANT,

vs.

WILLIAM T. EWING.

APPEAL FROM THE COURT OF CLAIMS.

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1 In the Court of Claims.

WILLIAM T. EWING, }
vs. } No. 16345.
THE UNITED STATES. }

I. *Pleadings.*

It appears of record in this cause that on October 8, 1888, Jane Yarrington, William T. Ewing, and sundry other postmasters in the State of Alabama filed their original petition.

It further appears of record that on November 23, 1888, the attorney for claimants, by leave of court, filed an amended petition as a substitute for the original petition, and that on March 26, 1889, the defendants filed their traverse of said petition.

It further appears of record that on November 11, 1897, the attorney for claimant, by leave of court, filed the separate amended petition of William T. Ewing in this cause, which said amended petition is as follows:

2 JANE YARRINGTON AND OTHERS }
v. } No. 16345.
THE UNITED STATES. }

Amended petition of William T. Ewing, filed Nov. 11, 1897.

The amended petition of W. T. Ewing states that he is a citizen of the United States residing at Gadsden, Ala., and that he was duly appointed and qualified and served as postmaster at Gadsden, Ala., continuously from July 1, 1866, to July 1, 1870, and performed during the whole of that period fully and faithfully all the duties of his said office; that during each of the said biennial terms of service the salary allowed and paid him was more than 10 per cent less than he would have received if paid in commissions under the act of 1854; that in consequence thereof he became entitled by the act of March 3, 1883 (Chapter 119 of the Laws of 1883), to a readjustment by the Postmaster-General of his salary in the biennial term between July 1, 1866, and June 30, 1868, and also in the biennial term between July 1, 1868, and June 30, 1870, and accordingly made application to the Postmaster-General within the time limited by law for the readjustments of salary to which he was entitled.

The amended petition further states that the Postmaster-General made the readjustment of salary to which petitioner was entitled, in each of said biennial terms, and that by the readjustment of salary made in the biennial term between July 1, 1866, and July 1, 1868, petitioner became entitled to be paid a salary of $531.90 in lieu of a salary of only
3 $146, which had previously been allowed and paid to him, and that by the readjustment of salary made in the biennial term between July 1, 1868, and July 1, 1870, he became entitled to be paid a salary of $1,015 in lieu of a salary of only $440 which had been previously allowed and paid to him, which $440 allowed and paid was subsequently, however, increased to $531.90, which is the total salary paid to petitioner in the term between July 1, 1868, and July 1, 1870.

The amended petition further states that by the two readjustments of salary petitioner became entitled to be paid a total amount, $1,546.90, whereas he had only been paid $586, leaving $960.90 of his readjustment salary to be paid; that he has been refused payment by the Postmaster-General of the said $960.90, but has been paid $91.90 only thereof; that there is still due him from the United States of his readjusted salary $869, for which sum petitioner prays judgment of this court.

HARVEY SPALDING.

HARVEY SPALDING, being duly sworn, deposes and says, that he is the attorney for the claimant in this case; that no assignment of said claim or of any portion thereof has been made; that the claimant is justly entitled to the amount therein claimed from the United States, as deponent verily believes, exclusive of all offsets and just grounds of defense, and that he believes the facts stated in the said amended petition are true.

HARVEY SPALDING.

Sworn to and subscribed before me on this 11th day of November, 1897.

[SEAL.] GEORGE W. TAYLOR,
Notary Public.

4 *Traverse. Filed Nov. 22, 1899.*

It further appears of record that on the 22d day of November, 1899, the defendants filed their traverse of the said amended petition of William T. Ewing as follows:

In the Court of Claims of the United States. Term A. D. 1898–1899.

WM. T. EWING
vs.
THE UNITED STATES. } No. 16345.

And now comes the Attorney-General, on behalf of the United States, and answering the amended petition of the claimant herein, filed Nov. 11, 1897, denies each and every allegation therein contained, and asks judgment that the said amended petition be dismissed.

And as to so much of the said amended petition as avers that the said claimant has at all times borne true faith and allegiance to the Government of the United States, and has not in any way voluntarily aided, abetted, or given encouragement to rebellion against the said Government, the Attorney-General, in pursuance of the statute in such case provided, denies the said allegations, and asks judgment accordingly.

L. H. PRADT,
Assistant Attorney-General.

5 II. *Statement as to the findings of fact, judgment, and opinion of the court of April 2, 1900.*

It appears of record that on the second day of April, 1900, the court filed its findings of fact, and conclusion of law and judgment was entered

for William T. Ewing, claimant, in the sum of eight hundred and sixty-nine dollars, ($869).

The court also filed an opinion.

Subsequently, to wit, on December 10, 1900, as appears hereinafter in this record, the court set aside said findings of fact and vacated said judgment, and thereupon filed new findings of fact and ordered a re-formed judgment to be entered.

The opinion of the court is as follows:

OPINION. FILED APRIL 2, 1900.

DAVIS, J., delivered the opinion of the court:

Plaintiff was postmaster at Gadsden, Ala., from July 1, 1866, to July 1, 1870. He in due course, following the act of 1883, applied for a readjustment of his salary, whereupon the proceedings set forth in the findings of fact took place.

The act of 1883 (22 Stat. L., 487), referring to the act of June 12, 1866, "authorized and directed the Postmaster-General to readjust salaries of postmasters of the third, fourth, and fifth classes (act of July 1, 1864) whose salaries had not been theretofore readjusted under section 8 of the act of June 12, 1866, and who made returns showing that the salary allowed was 10 per centum less than it would have been upon the basis of computation under the act of 1854. These readjustments were to be made according to the mode prescribed in the act of June 12, 1866, (sec. 8), and were "to date from the beginning of the quarter succeeding that in which such sworn returns of receipts and business or quarterly returns were made"—this to be upon written application by the postmaster.

6 Plaintiff accordingly made application, and November 7, 1888, the Post-Office Department made a statement from which this is an extract:

"Statement relative to the claims of Jane Yarrington and others [one of them the plaintiff] for a review of their salaries as former postmasters at the following-named offices in the State of Alabama, under the act of March 3, 1883." In the list appears the name of this plaintiff described as postmaster at Gadsden; his "period of service as per application" is stated as from July 1, 1865, to July, 1874, and under the heading "Remarks" appears this: "The returns for the 3rd and 4th qrs. of 1864, 1st, 2nd, and 3rd qrs. of 1865, and 1st qr. of 1866 are not on record; no review can be made to June 30, 1868. From July 1, 1868, to June 30, 1872, $186.90 was allowed. From July 1, 1872, to June 30, 1874, no additional amount is due."

Plaintiff served as postmaster at Gadsden between July 1, 1866, and June 30, 1870. Under the act of 1864 (13 Stat. L., 335) he was a postmaster of the fifth class (during his first biennial term), as his adjusted salary was less than $100; in the second term, under the same act, he was of the fourth class, his salary being more than $100 and less than $1,000 per annum. He now seeks to recover a readjusted salary of $531.90 in his first term and a readjusted salary of $1,015 in his second term ($1,582.90), less the adjusted salary heretofore paid in each of those terms.

Coming on to be heard with this case, on the merits, is defendants' motion to dismiss the petition upon the ground that the Supreme Court and this court have decided in similar causes "that a readjustment of a postmaster's salary is a necessary precedent to a cause of action in a petition for relief under the act of March 3, 1883 (22 Stat. L., 487), and the act of July, 1864 (13 Stat. L., 335)." It has been decided by the Supreme Court that an action of this nature can not succeed unless a readjustment has in fact taken place (McLean v. The United States, 95 U. S. R., p. 750), a decision followed by the Court of Claims in Birdsong's Case (34 C. Cls. R., p. 437). We were at first consideration of this case on the evidence at that time before us brought to one point as decisive of this action: Did the action of the Postmaster-General amount to a readjustment under the statute?

The Postmaster-General was requested by this court to furnish it "duly authenticated copies of the papers and documents supposed to be on file" in the Post-Office Department "showing or tending to show what action, if any, was taken by the Department upon the request of each of the claimants herein for a readjustment of salary under the following acts," being the statutes which relate to this cause of action. In response to this request the Postmaster-General answered "that the statement hereto annexed and made a part of this reply and marked 'Exhibit A' contains a full copy of the papers named in the order of said court." To this communication is annexed a document thus headed: "Post-Office Department, office of the First Assistant Postmaster-General." This is a statement relating to the claims of postmasters at certain offices (including plaintiff's) under the act of March 3, 1883. Here we find, as to Ewing, that the report shows this:

"The returns for the 3rd and 4th qrs. of 1864, 1st, 2nd, and 3rd qrs. of 1865, and 1st qr. of 1866 are not on record; no review can be made to June 30, 1868. From July 1, 1868, to June 30, 1872, $186.90 was allowed. From July 1, 1872, to June 30, 1874, no additional amount is due."

Up to this point it appeared that the Postmaster-General was to readjust the salaries of postmasters of the class whom plaintiff represents, but it did not appear that he had done so. The case then might perhaps have fallen within the principle that where a claim is by statute made to depend upon the previous action of an executive officer no right vests until that officer has acted.

Subsequent to all this (the 19th of November, 1897) Postmaster-General Gary certified and returned to this court a readjustment of plaintiff's salary with documents in relation to the action of the Post-Office Department in this class of cases.

It therefore follows that if the foregoing action of Postmaster-General Wanamaker is that intended by the statute, it was final. If the action of Postmaster-General Gary is that intended by the statute, the plaintiff should recover $869.

Upon the readjustment made by Postmaster-General Gary we are of opinion that the plaintiff should recover, and this result we reach for the reasons set forth by Postmaster-General Gresham, stated in the findings of fact.

Judgment for plaintiff for $869.

7 Court of Claims. No. 16345.

WILLIAM T. EWING }
vs.
THE UNITED STATES. }

III. *Amended petition. Filed November 30, 1900.*

The amended petition of the claimant states that since April 2, 1900, the Postmaster-General has disclosed the complete facts as to the readjustments of the claimant's salaries for the four biennial terms of service between July 1, 1864, and June 30, 1874, which facts are as follows: The claimant's readjusted salary between July 1, 1866, and June 30, 1868, is $531.90, and his paid salary is $146 for that term. His readjusted salary for the term between July 1, 1868, and June 30, 1870, is $1,015, and his paid salary for that term is $531.90. His readjusted salary for the term between July 1, 1870, and June 30, 1872, is $1,179.67, and his paid salary for that term is $1,015. His readjusted salary for the term between July 1, 1872, and June 30, 1874, is $1,311.16, and his paid salary for that term is $1,080. Wherefore judgment is prayed for in favor of the claimant by this court against the United States for the sum of $1,264.83.

HARVEY SPALDING.

HARVEY SPALDING, attorney for the claimant, being first duly sworn, says that the facts stated in the amended petition are true, as he believes, and that the claimant is entitled to judgment against the United States for the sum of $1,264.83.

HARVEY SPALDING.

Subscribed and sworn to before me this 30th day of Nov., 1900.

GEO. W. TAYLOR, *Notary Public.*

NOV. 3.

(Indorsed:) Copy. Court of Claims. No. 16345. Wm. T. Ewing vs. The United States. Amended petition. Harvey Spalding, atty. for claimant.

8 IV. *Order of court setting aside former findings and judgment and filing new findings and directing re-formed judgment to be entered.*

At a Court of Claims held in the city of Washington on December 10, 1900, it was ordered in the case of William T. Ewing v. United States, No. 16245, that the motion of the claimant to vacate and set aside the findings and judgment herein of April 2, 1900, be allowed, and that new findings be filed and a new judgment be entered.

BY THE COURT.

9 V. *Findings of fact and conclusion of law—Filed December 10, 1900.*

WILLIAM T. EWING }
v.
THE UNITED STATES. }

This case having been heard by the Court of Claims, the court upon the evidence finds the facts to be as follows:

FINDINGS OF FACT.

I.

Plaintiff was postmaster at Gadsden, Ala., during the period involved in this action.

II.

As such postmaster he was paid:

For his services between July 1, 1866, and June 30, 1868, $73 per year, or for two years	$146.00
For his services between July 1, 1868, and June 30, 1870, at $220 per year, or for two years	440.00
For his services between July 1, 1870, and June 30, 1872, at $460 per year, or for two years	920.00
For his services between July 1, 1872, and June 30, 1874, at $540 per year, or for two years	1,080.00
In addition thereto since said service for the two years between July 1, 1868, and June 30, 1870, $45.95 per year, amounting for the two years to	91.90
And for the two years between July 1, 1870, and June 30, 1872, $47.50 per year, amounting for the two years to	95.00
Amounting in all to	2,772.90

During his first biennial term his adjusted salary was less than $100. During his second, third, and fourth biennial terms his adjusted salary was more than $100 and less than $1,000 per annum.

III.

He made application in writing to the Postmaster-General for readjustment and payment of salary (under chapter 119 of the laws of 1883) for service as postmaster, in accordance with chapter 61 of the laws of 1854 and section 8 of chapter 114 of the laws of 1866. This he did prior to January 1, 1887. The Postmaster-General thereupon stated plaintiff's account, as shown later in these findings. This statement shows that (if plaintiff be correct in his contention as to the law) his salary for the four biennial terms between July 1, 1866, and June 30, 1874, should have been $4,037.73, whereas he has been paid in all for said terms but $2,772.90; so (if he be correct) there is still due him as readjusted salary $1,264.83.

IV.

The following order and memorandum were entered by this court; the following call was made by this court upon the honorable the Post-

master-General, and the following reply was received from him, dated May 31, 1889:

10 "*Motion for rule on Post-Office Department in accordance with order of court.*

"ORDER.

"This cause is remanded to the docket for proceedings in accordance with memorandum filed herewith.

"MEMORANDUM.

"This cause is remanded to the docket with direction that a rule issue requesting the Postmaster-General to furnish the court with a certified copy of any and all papers in his Department showing or tending to show what action, if any, was taken by the Department upon the request of each of the claimants herein for a readjustment of salary under the following acts:

"June 22, 1854, chapter 61, 10 Stat. L., page 298; July 1, 1864, sections 1 and 2, chapter 197, 13 Stat. L., 335; June 12, 1866, section 8, chapter 114, 14 Stat. L., 59; March 3, 1883, chapter 119, 22 Stat. L., 487.

"Allowed.

W. A. R., *Ch. J.*

"*Call on Post-Office Department.*

"To the Hon. JOHN WANAMAKER,
"*Postmaster-General:*

"You are hereby requested to furnish to the Court of Claims, that the same may be used as evidence on the trial of the above-entitled cause now pending in said court, duly authenticated copies of the papers or documents supposed to be on file in your Department, set forth in the accompanying rule allowed by Chief Justice Richardson.

"Your reply thereto you will please return to this office at your earliest convenience.

"By order of the court.

"In testimony whereof I have hereunto set my hand and affixed the seal of said court at Washington this 22 day of May, A. D. 1889.

[SEAL.] "ARCHIBALD HOPKINS,
"*Chief Clerk of Court of Claims.*

"*Reply of Post-Office Department.*

"POST-OFFICE DEPARTMENT,
"OFFICE OF THE POSTMASTER-GENERAL,
"*Washington, D. C., May 31, 1889.*

"*To the honorable the Chief Justice and Judges Court of Claims:*

"Comes now the Postmaster-General, in response to the rule of the honorable the United States Court of Claims, by his honor Chief Justice Richardson, of date May 22, 1889, and makes reply thereto as follows:

"That the statement hereto annexed and made a part of this reply, and marked 'Exhibit A,' contains a full copy of the papers named in the order of said court, and further saith not.

11 "In witness whereof I, John Wanamaker, Postmaster-General, hereunto set my hand and affix the seal of the Post-Office Department this first day of June, A. D. 1889.

[SEAL.] "JOHN WANAMAKER,
"*Postmaster-General.*

"EXHIBIT A.

"POST-OFFICE DEPARTMENT,
"OFFICE OF THE FIRST ASSISTANT POSTMASTER-GENERAL,
"SALARY AND ALLOWANCE DIVISION,
"*Washington, D. C., November 7, 1888.*

"*Statement relative to the claims of Jane Yarrington and others for a review of their salaries as former postmasters at the following-named offices in the State of Alabama under the act of March 3, 1883.*

Post-office.	Name of claimant.	Period of service as per application.		Remarks.
		From—	To—	
* *	* * * * *	* *	* *	* * * * * *
Gadsden...	Wm. T. Ewing	July 1, '65	July 1, '74	The returns for the 3d and 4th qrs. of 1864, 1st, 2nd, and 3rd qrs. of 1865, and 1st qr. of 1866 are not on records; *no review* can be made to June 30'68. From July 1, 1868, to June 30, 1872, $186.90 was allowed. From July 1 '72 to June 30 '74, no additional amount is due.

V.

Subsequent to the foregoing proceedings, to wit, on the 19th of November, 1897, Postmaster-General Gary certified and returned to this court the following readjustment of the plaintiff's salary and documents relating to the action of the Post-Office Department in this and similar cases. If the foregoing readjustment of Postmaster-General Wannamaker is the readjustment prescribed and intended by the statutes therein referred to, there is no balance of salary remaining due the plaintiff. If the readjustment hereinafter set forth of Postmaster-General Gary is the readjustment prescribed and intended by the said statutes, there remains due to the plaintiff the sum of $1,264.83.

VI.

The following documents are found as facts herein, to wit:

1. Letter from Mr. Gresham, Postmaster-General, to Mr. Hatton, First Assistant Postmaster-General, dated June 9, 1883.

2. Copy of item furnished the press by Postmaster-General Gresham, through Chief Clerk Walker, February 16, 1884, etc., dated February 17, 1884.

3. Copy of a circular letter to "late postmasters," Form 1223.

4. Copies of the transcript of registered returns of W. T. Ewing as postmaster at Gadsden, Ala., etc.

5. Copy of the restatement of Ewing's account.

12 1. *Claims of postmasters for readjustment of salaries under act of March 3, 1883.*

"POST-OFFICE DEPARTMENT,
"*Washington, D. C., June 9, 1883.*

"Hon. FRANK HATTON, *First Assistant Postmaster-General.*

"SIR: A careful examination of the act approved March 3, 1883, entitled 'An act authorizing and directing the Postmaster-General to readjust the salaries of certain postmasters in accordance with the provisions of section 8 of the act of June 12, 1866,' has satisfied *me that the purpose* of this legislation is to require the Postmaster-General, in all cases in which any one of his predecessors has failed to comply with the provisions of section 2 of the act of July 1, 1864, as amended by section 8 of the act of June 12, 1866, requiring a readjustment of salaries in offices of the third, fourth, and fifth classes, to proceed to make such adjustments under the terms of that section.

"It is essential, therefore, to ascertain the exact meaning of section 2 of the act of July 1, 1864, and the change effected by the amendment of June 12, 1866.

"The act of June 22, 1854, authorized the Postmaster-General to allow commissions to postmasters at the following rates on the postage collected at their respective offices in each quarter of the year, and in due proportion for any period less than a quarter:

"On not exceeding $100, 60 per cent.

"Over $100 and not exceeding $400, 50 per cent.

"Over $400 and not exceeding $2,400, 40 per cent.

"Over $2,400, 15 per cent.

"There are certain qualifications and additions to these commissions not necessary to enumerate for the purpose of this examination.

"Under the provisions of this act the commissions were allowed to postmasters upon each quarterly return.

"The act of July 1, 1864, classified postmasters according to the salary received. Those whose compensation was not less than $3,000 yearly was placed in the first class; those whose commissions were below that sum and yet reached $2,000 per annum were of the second class; post-offices with the salaries between $1,000 and $2,000 were of the third class; those between $100 and $1,000 of the fourth class, and those under $100 constituted the fifth class.

"Post-offices were to be arranged in these classes whenever for the two consecutive years next preceding July 1, 1864, the compensation at the office should have amounted to the average sum assigned to the class.

"The second section of the act reads as follows:

"'And be it further enacted, That the Postmaster-General shall review once in two years, and in special cases, upon satisfactory representation, as much oftener as he may deem expedient, and readjust, on the basis of the preceding section, the salary assigned by him to any office; but any change made in such salary shall not take effect until the first day of the quarter next following such order, and all orders made assigning or changing salaries shall be made in writing and recorded in this journal and notified to the Auditor for the Post-Office Department.'

"Under this legislation it resulted that while under the act of June

22, 1854, postmasters received their compensation based upon
13 each quarterly return, they were in future to be paid salaries for two years based upon the average amount of receipts, as shown by their quarterly returns for the two years preceding the 1st day of July, 1864, calculated upon the basis fixed in the act of June 22, 1854.

"As this general legislation, however, fixing absolutely the salary of a postmaster for two years in advance upon the basis of his receipts for the two years preceding would, in rapidly growing communities, work an injustice to postmasters the revenues of whose offices would be largely increased without any corresponding increase during the two years in their salary, the Postmaster-General was authorized 'in special cases, upon satisfactory representation, as much oftener as he may deem expedient, to make such readjustment on the basis of the preceding section.'

"The rule fixed by this legislation was a biennial readjustment of salaries. The exception to this rule was the exercise by the Postmaster-General of a discretion 'in special cases.'

"After this act had been in force for nearly two years the second section was amended by adding the following:

"'*Provided*, That when the quarterly returns of any postmaster of the third, fourth, and fifth class show that the salary allowed is 10 per centum less than it would be on the basis of commissions under the act of 1854, fixing compensation, then the Postmaster-General shall review and readjust under provisions of said section.'

"There is no attempt in this section to change the settled rule of biennial readjustment. It requires simply that when the 'quarterly returns' at offices of the third, fourth, and fifth class show that the salary allowed upon the average annual compensation of postmasters for the two next preceding years is 10 per cent less than it would be on the basis of the act of 1854 (which basis is the actual quarterly returns themselves), then the Postmaster-General shall adjust upon the quarterly returns.

"The substitution of a salary for two years by the act of July 1, 1854, based upon the average returns for two years in place of commissions upon each quarterly return, was not abandoned by the amendment, but it was provided that where the effect of taking the average of annual compensation of postmasters for the two years preceding was to reduce the compensation of the postmasters 10 per cent below what it would be by using the eight preceding quarterly returns themselves as a basis, the postmaster at such office belonging either to the third, fourth, or fifth class should have the adjustment upon the actual quarterly returns.

"This construction leaves in full force the policy inaugurated by the act of July 1, 1864, of paying salaries to postmasters, which are fixed for a period of two years in advance, the amendment simply providing that all postmasters of the third, fourth, and fifth class whose compensation was thus reduced 10 per cent or more below what they would have received under the act of 1854 shall have their salaries readjusted and fixed upon the basis of the latter act.

"This construction of the amendment leaves in full force the discretion conferred upon the Postmaster-General to make a readjustment 'in special cases, upon satisfactory representation, as much oftener as he may deem expedient.'

"I am aware a persistent effort has been made for years to make it

14 appear that it was an imperative duty of the Postmaster-General, under the amendment to examine each quarterly return as made by postmasters of the third, fourth, and fifth class, with a view of ascertaining whether officers of these classes would have their compensation reduced on the basis of the act of 1864 as much as 10 per cent below the basis of the act of 1854, and, if this result appeared, to make the adjustment quarterly, as though the act of 1864 had not passed. This construction of the amendment would practically destroy the principles of legislation of which it formed a part as to all officers claimed to be within its provisions and render biennial adjustments as to them not only unnecessary, but absolutely impossible. It was not the intention of Congress by the amendment of 1866 to repeal any part of the statute of 1864. The latter statute was to stand, the amendment simply securing to officers of the designated classes the right to have their biennial adjustments of salaries made upon the basis of the act of 1854, instead of the act of 1864, whenever they could save 10 per cent by this course.

"If, in fact, there are cases in which it appeared from the quarterly returns or from sworn reports of receipts and business that postmasters of the third, fourth, and fifth class at the biennial readjustment had their salaries fixed under the act of 1864, when, by an adjustment under the act of 1854, 10 per cent or more would have been added to their salaries, then under the act of 1883 such postmasters are entitled to whatever additional sum they would and should have received under the act of 1854.

"In all cases, therefore, in which applications are made for readjustment under the act of 1883, signed by the postmasters or late postmasters of the third, fourth, or fifth classes, or if deceased by their executors or administrators, you will take the necessary steps to determine from the sworn returns of receipts and business for readjustment or from the quarterly returns made whether any additional sum is due under section 8 of the act of 1866 as herein construed.

"Very respectfully,

"W. Q. GRESHAM,
"*Postmaster-General.*"

2. *Copy of item furnished to press by Postmaster-General Gresham through Chief Clerk Walker, February 16, 1884, relative to opinion of Attorney-General Brewster construing act of March 3, 1883.*

"WASHINGTON, *February 17, 1884.*

"The Attorney-General has rendered an opinion in regard to the construction of the act of March 3, 1883, relative to the readjustment of postmasters' salaries. He holds that in all cases in which it appears from the biennial adjustment of salaries of postmasters of the third, fourth, and fifth classes that they receive 10 per cent or more less than they would have received in commissions under the act of 1854 they are now entitled under the act of March 3, 1883, to the difference between what was paid them and what they would receive as commissions under the act of 1854. He also holds that it is not the intention of Congress by the acts of 1864 and 1866 to dispense with the biennial readjustments. It follows that a claimant under the act of March 3,

1883, must show that the acts subsequent to 1854 deprived him of 10 per cent or more of what he should have received if those statutes had not been enacted, and he had been compensated on the basis of the act of 1854. This opinion of the Attorney-General is in harmony with the construction of those statutes by the Department."

15 3. *Copy of the circular letter addressed by the Department to late postmasters on Form No. 1223.*

[Form No. 1223, New Series, November, 1884.]

"POST-OFFICE DEPARTMENT,
"OFFICE OF FIRST ASSISTANT POSTMASTER-GENERAL,
"SALARY AND ALLOWANCE DIVISION,
"*Washington, D. C.*, ———, ——.

"SIR: In response to your application, dated ———, for a readjustment of ——— salary ——— as postmaster under the provisions of the act approved March 3, 1883, you are informed that by direction of the Postmaster-General applications or claims of this nature are being placed in process of examination and review.

"The act embraces such claims as postmasters or late postmasters may have, for a review of their salaries under the provision of section 8 of the act of June 12, 1866, wherein it shall appear that the salary allowed was 10 per centum less than it would have been upon the basis of commissions under the act of 1854.

"Briefly stated, the period covered by the act of March 3, 1883, dates from July 1, 1864, to July 1, 1874, and the review will be made on biennial adjustments (i. e., on returns for eight quarters) immediately preceding the biennial adjustment. Claimants should, therefore, furnish without delay the following information, viz:

"First. Period of service as postmaster from ——— to ———.

"Second. The name of post-office, county, and State.

"Third. The present address of claimant.

"This information must be inclosed in an envelope addressed to the First Assistant Postmaster-General, Salary and Allowance Division, Washington, D. C., and bear the inscription 'Claim for review of adjustment of salary.' Upon its receipt your claim will be reviewed in its regular order, and you will be advised when action is taken.

"Very respectfully, ——— ———,
"*First Assistant Postmaster-General.*"

4. *Copies of the transcripts of registered returns of W. T. Ewing as postmaster at Gadsden, Ala., in his biennial term of service beginning July 1, 1866, and ending June 30, 1868, and also in his biennial term of service beginning July 1, 1868, and ending July 1, 1870, on Form No. 1224.*

[Post-office, Gadsden: State, Alabama.]

Quarter ending—	Stamps and envelopes sold.	Letter postage.	Newspaper postage.	Box rents.	Salary allowed.
Sept. 30, 1866	$54.44	$0.75	$2.97	.....	$18.25
Dec. 31, 1866	135.32	.18	3.20	.....	18.25
Mch. 31, 1867	83.44	.09	3.85	.....	18.25
June 30, 1867	88.80	.24	5.30	.....	18.25
Sept. 30, 1867	112.69	.63	7.16	.....	18.25
Dec. 31, 1867	101.63	.22	7.61	.....	18.25
Mch. 31, 1868	129.71	.41	9.82	.....	18.25
June 30, 1868	141.42	.81	13.11	.....	18.25
Total	847.45	3.33	53.02	.....	146.00
Sept. 30, 1868	199.51	.70	14.88	.....	55.00
Dec. 31, 1868	155.25	.95	13.98	.....	55.00
Mch. 31, 1869	199.56	1.17	14.49	.....	55.00
June 30, 1869	195.44	.42	14.39	.....	55.00
Sept. 30, 1869	202.65	.90	15.61	.....	55.00
Dec. 31, 1869	232.18	.81	20.78	.....	55.00
Mch. 31, 1870	322.64	2.53	20.51	.....	55.00
June 30, 1870	221.20	.86	18.80	.....	55.00
Total	1,728.23	8.54	133.44	.....	440.00
Sept. 30, 1870	205.85	138.00	18.90	.....	115.00
Dec. 31, 1870	185.94	.66	22.72	.....	115.00
Mch. 31, 1871	229.61	1.11	23.62	86.10	115.00
June 30, 1871	198.87	1.50	25.11	19.90	115.00
Sept. 30, 1871	191.32	1.36	25.39	20.95	115.00
Dec. 31, 1871	224.94	1.59	26.06	20.95	115.00
Mch. 31, 1872	221.95	1.02	23.09	20.00	115.00
June 30, 1872	222.61	1.25	25.06	21.30	115.00
Total	1,681.13	9.87	289.95	109.20	920.00
Sept. 30, 1872	199.85	.81	25.00	20.97	135.00
Dec. 31, 1872	201.55	1.62	23.77	21.00	135.00
Mch. 31, 1873	276.74	.99	22.82	21.65	135.00
June 30, 1873	221.50	1.56	25.88	21.70	135.00
Sept. 30, 1873	244.82	1.47	20.94	21.35	135.00
Dec. 31, 1873	234.02	1.20	28.66	20.97	135.00
Mch. 31, 1874	275.49	1.47	30.84	20.97	135.00
June 30, 1874	246.30	2.94	32.56	21.15	135.00
Total	1,900.27	12.06	210.47	169.76	1,080.00

5. *Copy of the restatement of the salary account of claimant, W. T. Ewing, made under direction of the Postmaster-General upon transcripts of claimant's registered returns from July 1, 1866, to June 30, 1868, for the biennial period from July 1, 1868, to June 30, 1870.*

No returns from the said post-office were made to the Auditor for the six first quarters, biennial period from July 1, 1864, to June 30, 1866; hence there was no restatement of Mr. Ewing's salary account for the period from July 1, 1866, to June 30, 1868.

16 STATEMENT.

From July 1, 1868, to July 1, 1870.

COMPUTATION.

Eight quarters.

$45.95 ÷ 4=$11.48¾ × 8=$91.90.

Receipts, July 1, 1866, to July 1, 1868.

Stamps	$847.45
Letter postage	3.33
Newspaper postage	53.02

Compensation.

$800.00×60 per cent	$480.00
103.80×50 per cent	51.90
Total compensation, 2 years	531.90
Average compensation, 1 year	265.95
Total salary allowed, 2 years	440.00
Average salary allowed, 1 year	220.00

$265.95 − $220.00=$45.95, or an increase of 20.8 per cent.
$531.90 − $440.00=$91.90, due claimant.

STATEMENT.

From July 1, 1870, to July 1, 1872.

COMPUTATION.

Eight quarters.

$47.50 ÷ 4=$11.875×8=$95.

Receipts, July 1, 1868, to July 1, 1870.

Stamps	$1,728.23
Letter postage	8.54
Newspaper postage	133.44

COMPENSATION.

$800.00×60 per cent	480.00
$1,070.00×50 per cent	535.00
Total compensation, 2 years	1,015.00
Average compensation, 1 year	507.50
Total salary allowed, 2 years	920.00
Average salary allowed, 1 year	460.00

$507.50 − $460.00=$47.50, or an increase of 10.3 per cent.
$1,015.00 − $920.00=$95.00, due the claimant.

STATEMENT.

From July 1, 1872, to July 1, 1874.

COMPUTATION.

Eight quarters.

No additional salary due.

Receipts, July 1, 1870, to July 1, 1872.

Stamps	$1,681.13
Letter postage	9.87
Newspaper postage	289.95
Box rents	109.20

17 COMPENSATION.

$800.00 × 60 per cent	$480.00
$1,180.95 × 50 per cent	590.47
Box rents	109.20
Total compensation, 2 years	1,179.67
Average compensation, 1 year	589.83
Total salary allowed, 2 years	1,080.00
Average salary allowed, 1 year	540.00

$589.83 − $540=$49.83, or an increase of 9.2 per cent.
The increase being less than 10 per cent, nothing is due the claimant.

VII.

On April 3, 1890, the Postmaster-General, pursuant to a resolution of the United States Senate, reading as follows:

"*Resolved*, That the Postmaster-General be directed to report to the Senate the salaries due postmasters computed upon applications presented to the Postmaster-General under chapter 119 of the laws of 1883, upon the basis of chapter 61 of the laws of 1854 agreeably to the requirement of section 8 of chapter 114 of the laws of 1866, and chapter 119 of the laws of 1883 as the requirement of said laws is laid down and published by authority of the Postmaster-General in Exhibit A of Senate Executive Document 146, 49th Congress, first session, and in Post-Office Department circular, form No. 1223, such report to exhibit in each case the amount of computed salary for the biennial term of service, and for each fractional term of service, less the amount of paid salary for the same term of service in all such cases in which it appears that postmasters of the three classes within the acts received salaries ten per cent or more less than they would have received in commissions under the act of 1854 had not the act subsequent to 1854 been enacted, and to be made from time to time as report of such claims already computed can be prepared and tabulated in each State; and that the Postmaster-General be directed to make a like report to the Senate as early as practicable in all such claims presented to the Postmaster-General prior to January 1, 1887, which have not yet been computed."

Made the following communication:

"APRIL 3, 1890.

"Hon. PHILETUS SAWYER,

"*Chairman Senate Committee on Post-Offices and Post-Roads.*

"SIR: I have the honor to transmit the following:

"First. Copy of opinion of Hon. A. A. Freeman, Assistant Attorney-General for the Post-Office Department, to whom the question was referred by Postmaster-General Gresham, setting forth the requirements of section 8, chapter 114, of the laws of 1866, and chapter 119 of the laws of 1883.

"Second. Copy of the rule of said laws as published by Postmaster-General Gresham, on the 16th of February, 1884.

"Third. Copy of Department circular No. 1223 containing the rule of said laws as published by Postmaster-General Gresham and his successors in office.

"Fourth. A tabulated statement exhibiting all the claims within the rule of the law thus published from the State of Alabama, pre-
18 sented and computed under chapter 119 of the laws of 1883, said statement to exhibit the gross amount of the earnings of the postmasters for each term of service thus ascertained, and the amount of salary paid for each of said terms of service, and the difference between what was paid them and what they would have received as commissions under the act of 1854 by the rule promulgated by Postmaster-General Gresham, on the 16th day of February, 1884.

"Very respectfully,

(Signed) "JOHN WANAMAKER,

"*Postmaster-General.*"

This statement was as follows:

"POST-OFFICE DEPARTMENT,

"OFFICE OF THE FIRST ASSISTANT POSTMASTER-GENERAL,

SALARY AND ALLOWANCE DIVISION.

Schedule of the postmasters and ex-postmasters of the 3rd, 4th, and 5th classes for the State of Alabama, showing the difference between amounts heretofore paid, and commissions computed under the act of 1854, as required by resolution of Congress.

No.	Post-office.	State.	Postmaster, ex-postmaster, or claimant.	Term of service.	Aggregate amt. of coms. under act of 1854.	Aggregate of compensation.	Dif. bet. excess of commissions under act of 1854 from aggregate amt. paid.
	Gadsden	Ala	W. T. Ewing	July 1, 1866, to July 1, 1868	$531.99	$146.00	$385.99
	"	"	"	July 1, 1868, to July 1, 1870	1,015.00	531.99	483.10
	"	"	"	July 1, 1870, to July 1, 1872	1,179.67	1,015.00	164.67
	"	"	"	July 1, 1872, to July 1, 1874	1,311.16	1,080.00	231.16

This letter of the Postmaster-General, of which the following is a copy, was followed by a letter, of which the following is a copy:

"SEPT. 30. 1890.

"Hon. PHILETUS SAWYER,
"*Chairman Senate Committee on Post-Offices and Post-Roads,*
"*U. S. Senate, Washington, D. C.*

"SIR: I have the honor to request the return of statements relative to the review of salaries of postmasters and of late postmasters of the 3rd, 4th, and 5th classes for the States of Alabama, Kansas, and Kentucky, which were forwarded to your committee agreeably to resolutions of the Senate.

"I desire to review them in the light of further information on the subject.

"Very respectfully,
(Signed) "JOHN WANAMAKER,
"*Postmaster-General.*"

CONCLUSION OF LAW.

Upon the foregoing findings of fact, the court decides, as a conclusion of law, that the claimant recover judgment of and from the United States in the sum of one thousand two hundred and sixty-four dollars and eighty-three cents.

19 VI. *Judgment of the court.*

WILLIAM T. EWING }
vs. } No. 16345.
UNITED STATES. }

At a Court of Claims held in the city of Washington on the 10th day of December, A. D. 1900, judgment was ordered to be entered as follows:

The court, on due consideration of the premises, find for the claimant, and do order, adjudge, and decree that the claimant, William T. Ewing, have and recover of and from the United States the sum of one thousand two hundred and sixty-four dollars and eighty-three cents ($1,264.$\frac{83}{100}$).

BY THE COURT.

20 VII. *Application for and allowance of appeal.*

WILLIAM T. EWING }
vs. } No. 16345.
UNITED STATES. }

From the judgment rendered in the above-entitled cause on the 10th day of December, 1900, in favor of the claimant, the defendants, by their Attorney-General, on the 11th day of December, 1900, make application for and give notice of an appeal to the Supreme Court of the United States.

LOUIS A. PRADT,
Asst. Attorney-General.

Filed, December 11, 1900.

DECEMBER 11, 1900.

Ordered, That this appeal be allowed as prayed for.

BY THE COURT.

21 In the Court of Claims.

WILLIAM T. EWING
vs.
UNITED STATES. } No. 16345.

I certify that the foregoing are true transcripts, as to the pleadings in the above-entitled cause, of the findings of fact and conclusion of law, of the opinion of the court, of the final judgment of the court, of the application for and allowance of appeal to the Supreme Court of the United States.

In testimony whereof I have hereunto set my hand and affixed the seal of said Court of Claims, at Washington City, this 5th day of January, A. D. 1901.

[SEAL.]

JOHN RANDOLPH,
Asst. Clerk, Court of Claims.

(Indorsement on cover:) File No. 18017. Court of Claims. Term No. 532. The United States, appellant, vs. William T. Ewing. Filed January 10, 1901.

○

In the Supreme Court of the United States.

OCTOBER TERM, 1900.

THE UNITED STATES, APPELLANTS,
v.
WILLIAM T. EWING. } No. 532.

APPEAL FROM THE COURT OF CLAIMS.

MOTION TO ADVANCE.

The Solicitor-General moves the court to advance this case so that it may be heard in the early part of the next term.

The case involves the construction of the act of March 3, 1883 (22 Stats., 487), which will determine the method of the readjustment of postmasters' salaries throughout the United States.

It is a class case, and the aggregate of the amounts involved approximates $4,000,000.

The Post-Office Department, from which this case originally came, is desirous that the questions raised be determined as speedily as the convenience of the court may permit.

Opposing counsel concurs in this motion.

JOHN K. RICHARDS,
Solicitor-General.

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No. 225.

Brf. of Attorney General (Pradt)
for Appellant.
Filed Oct. 9, 1901.

Office Supreme Court U. S.
FILED
OCT 9 1901
JAMES H. MCKENNEY
Clerk

In the Supreme Court of the United States.

OCTOBER TERM, 1901.

THE UNITED STATES, APPELLANT,
v.
WILLIAM T. EWING. } No. 225.

APPEAL FROM THE COURT OF CLAIMS.

BRIEF FOR THE UNITED STATES.

LOUIS A. PRADT,
Assistant Attorney-General.

In the Supreme Court of the United States.

OCTOBER TERM, 1901.

THE UNITED STATES, APPELLANT,
v.
WILLIAM T. EWING.
No. 225.

APPEAL FROM THE COURT OF CLAIMS.

BRIEF FOR THE UNITED STATES.

STATEMENT OF THE CASE.

The claimant was postmaster at Gadsden, Ala., during the period from July 1, 1866, to July 1, 1874.

As such postmaster he was paid:

For his services between July 1, 1866, and July 1, 1868, at $73 per year, or for two years	$146.00
For his services between July 1, 1868, and July 1, 1870, at $220 per year, or for two years	440.00
For his services between July 1, 1870, and July 1, 1872, at $460 per year, or for two years	920.00
For his services between July 1, 1872, and July 1, 1874, at $540 per year, or for two years	1,080.00
Aggregating	2,586.00

During his first biennial term his adjusted salary was less than $100 per annum.

During his second, third, and fourth biennial terms his adjusted salary was more than $100 and less than $1,000 per annum. (Rec., p. 6.)

During the same period the aggregate amount of commissions upon the receipts of his office, as provided by chapter 61 of the laws of 1854, would have been:

For the first biennial term (July 1, 1866, to July 1, 1868)	$531.90
For the second biennial term (July 1, 1868, to July 1, 1870)	1,015.00
For the third biennial term (July 1, 1870, to July 1, 1872)	1,179.67
For the fourth biennial term (July 1, 1872, to July 1, 1874)	1,311.16
Aggregating	4,037.73

(R., p. 16.)

The claimant made application in writing to the Postmaster-General for a readjustment and payment of his salary during said period, under chapter 119 of the laws of 1883, upon which application the Postmaster-General, pursuant to said statute, examined into and adjusted the salary of the claimant for the period of his service, and determined that for the biennial term July 1, 1868, to July 1, 1870, there was due the claimant on such readjustment $91.90; that for the biennial term July 1, 1870, to July 1, 1872, there was due the claimant on such readjustment $95; that for the biennial term July 1, 1872, to July 1, 1874, there was nothing due the claimant, the increase in the commissions over the salary allowed being less than 10 per cent of the salary. For the biennial term July 1, 1866, to July 1, 1868, the

Postmaster-General found that the returns for the third and fourth quarters of 1864; first, second, and third quarters of 1865, and first quarter of 1868 were not of record, and that no review could be made for that term. (R., pp. 14, 15, and p. 8.)

The total amount of $186.90 found due the claimant by the Postmaster-General upon this adjustment of his salary was paid to the claimant, making the aggregate amount paid to the claimant as compensation for his services during the total period of his service, $2,772.90. (R., p. 6.)

The claimant brought suit in the Court of Claims for $1,265.83, being the difference between $2,772.90, the compensation paid him as such postmaster, and $4,037.73, the amount of commissions upon the receipts of his office under the act of 1854, during his period of service, claiming that this amount was due him upon a proper readjustment of his salary pursuant to the statute of 1883.

The Court of Claims rendered judgment for the claimant in the full amount claimed by him. (R., p. 17.)

ASSIGNMENT OF ERRORS.

The court erred:

First. In finding that there was due to the claimant upon the readjustment of his salary by the Postmaster-General the sum of $1,264.83, or any other amount in excess of the amount of $186.90, found due by the Postmaster-General to the claimant upon such readjustment.

Second. The court erred in not holding that the readjustment of the claimant's salary as postmaster made by Postmaster-General Wanamaker, as set forth in the findings of fact, was a proper and valid readjustment of such salary as prescribed and intended by the statutes of the United States relating to readjustment of salaries of postmasters.

Third. The court erred in not dismissing the claimant's petition.

ARGUMENT.

PERTINENT STATUTES AND JUDICIAL INTERPRETATION OF THE SAME.

A review of various statutes relating to the compensation of postmasters, and more especially to the adjustment and readjustment of their salaries, and of the decisions of this court construing and applying the same, is necessary to a correct understanding of the claim made in this case, and, indeed, to an intelligible statement of the question involved.

By the statute of June 22, 1854 (10 Stat., c. 61, p. 298), the Postmaster-General was authorized to allow the postmasters commissions at various rates upon the postage collected at their respective offices. This system was changed by the act of July 1, 1864 (13 Stat., c. 197, p. 335), which divided the postmasters into five classes and substituted fixed salaries in place of commissions upon the receipts of their offices. These salaries the Postmaster-General was empowered and directed to estimate or adjust by assigning to each class, respectively, in even dollars, tens of dollars, or

hundreds of dollars, according to the amount of the prior compensation of the office, a salary in amount as nearly as practicable the same as, but not exceeding, the average compensation in commissions of the postmasters of each class for the two years next preceding the 1st day of July, 1864. For this purpose it was made the duty of the Auditor of the Treasury for the Post-Office Department to obtain from postmasters their quarterly accounts with the vouchers necessary to a correct adjustment thereof, and to report to the Postmaster-General all failures of postmasters to render such returns within a proper period after the close of each quarter.

These salaries were to be thus adjusted to take effect in the fourth and fifth classes [to which classes claimant belonged] on the 1st day of July, 1864, or at the commencement of a quarter as nearly as practicable thereafter. Section 2 of this act constituted the following important provision:

> That the Postmaster-General shall review once in two years, and in special cases, upon satisfactory representation, as much oftener as he may deem expedient, and readjust on the basis of the preceding section, the salary assigned by him to any office; but any change made in such salary shall not take effect until the first day of the quarter next following such order, and all orders made assigning or changing salaries shall be made in writing and recorded in his journal, and notified to the Auditor for the Post-Office Department.

This section was amended by the act of June 12, 1866 (14 Stat., c. 114, p. 60, sec. 8), by adding to the same the following proviso:

> *Provided*, That when the quarterly returns of any postmaster of the third, fourth, or fifth class show that the salary allowed is ten per centum less than it would be on the basis of commissions under the act of eighteen hundred and fifty-four, fixing compensation, then the Postmaster-General shall review and readjust under the provisions of said section.

These statutory provisions relating to the salaries of postmasters were construed by this court in the case of the *United States* against *McLean* (95 U. S., p. 750).

This was an action, commenced in the Court of Claims, in which the claimant alleged that he was appointed postmaster at Florence, Kans., on the 13th of March, 1871, and his salary fixed at $7 until it could be ascertained what the business of his office would be; that he entered upon the duties of his office on the 14th of April, 1871, continuing therein until after July 1, 1872, from which date his salary was fixed at $560 a year. His claim was that under the statutes above referred to he was entitled to be paid for his service between April 14, 1871, and July 1, 1872, the sum of $578, upon the basis of the provisions of said statutes relating to the compensation and the adjustment and readjustment of the salaries of postmasters. It further appeared in the case that during the period for which this claim was asserted the claimant made no application for readjustment of his salary as first fixed other

than a letter of complaint of the inadequacy of his compensation to the Third Assistant Postmaster-General, which letter, however, was unaccompanied by any sworn statement of the income of his office and furnished no basis for readjustment. Subsequently, in October, 1872, after his salary had been fixed at $560 on July 1 of that year, a person claiming to be the claimant's attorney wrote to the Department requesting that the order readjusting the salary should be modified so as to take effect from April 14, 1871; but this application was also unaccompanied by any sworn statement of the revenue of the office.

On appeal to this court from a judgment in favor of the claimant it was held upon the foregoing statement of facts that the claimant's action could not be maintained, because there had been no readjustment of the salary of the claimant during the period for which he claimed, and that such readjustment was a condition precedent to the claimant's right of recovery. And the statutes above quoted received the following construction:

> From a review of these statutory provisions it appears plainly that, after a salary of a postmaster has been fixed, a readjustment by the Postmaster-General must be made before it can be increased, and the readjustment takes effect in all cases prospectively.
>
> *United States* v. *McLean*, 95 U. S., p. 763.

There was also added the intimation that if the Postmaster-General had failed to do his duty in not

making such readjustment he might have been constrained by a *mandamus*.

Thereafter Congress enacted the statute of March 3, 1883 (22 Stat., c. 119, 487), as follows:

> That the Postmaster-General be, and he is hereby, authorized and directed to readjust the salaries of all postmasters and late postmasters of the third, fourth, and fifth classes, under the classification provided for in the act of July first, eighteen hundred and sixty-four, whose salaries have not heretofore been readjusted under the terms of section eight of the act of June twelfth, eighteen hundred and sixty-six, who made sworn returns of receipts and business for readjustment of salary to the Postmaster-General, the First Assistant Postmaster-General, or the Third Assistant Postmaster-General, or who made quarterly returns in conformity to the then existing laws and regulations, showing that the salary allowed was ten per centum less than it would have been upon the basis of commissions under the act of eighteen hundred and fifty-four; such readjustments to be made in accordance with the mode presented in section eight of the act of June twelfth, eighteen hundred and sixty-six, and to date from the beginning of the quarter succeeding that in which such sworn returns of receipts and business or quarterly returns were made: *Provided*, That every readjustment of salary under this act shall be upon a written application signed by the postmaster or late postmaster or legal representative entitled to said readjustment; and that each payment made shall be by warrant or check on the Treasurer

> or some assistant treasurer of the United States, made payable to the order of said applicant, and forwarded by mail to him at the post-office within whose delivery he resides, and which address shall be set forth in the application above provided for.

Following the enactment of this statute McLean presented a petition to the supreme court of the District of Columbia for a writ of *mandamus* against the Postmaster-General to compel him to make the readjustment which this court had held in *United States* v. *McLean* (*supra*) to be a prerequisite to any liability of the Government to the claimant. The petition was dismissed and the case was thereupon taken to this court upon a writ of error.

This court, after a careful review of all the statutes above referred to, including the statute of 1883, held that no readjustment of the salaries of postmasters was contemplated in these statutes oftener than once in two years, as a legal duty or obligation on the part of the Postmaster-General, and that hence the contention of the petitioner, that it was the duty of the Postmaster-General to readjust his salary as often as the return of any quarter showed that the salary received was 10 per cent less than the commissions for that quarter would have been, was without foundation. Accordingly, the judgment of the court below was affirmed, the court holding as follows:

> As the record shows that there were not returns from the post-office of the plaintiff for two years preceding the time when he demanded

> that a readjustment should take place, and also that a readjustment was made for the period from July 1, 1872, to July 1, 1874, it is obvious, according to this construction of the statutes, that there is no duty on the Postmaster-General to make the readjustment asked for.
>
> *McLean* v. *Vilas*, 124 U. S., 97.

It is clear from the foregoing decisions that the readjustment provided for in the various statutes relating to that subject is a biennial readjustment, to be made upon the basis of eight quarterly returns, and that so far as the statute of 1864 and the proviso of 1866 are concerned, this readjustment was to be made, not of salaries already earned, but of prospective salaries, and to be based upon the eight quarterly returns immediately preceding the commencement of the biennial term for which the salary was adjusted. As directed by the proviso of 1866, such adjustment was to be made whenever, at the close of a regular biennial term of a postmaster, it appeared that the salary which he had received during that period was 10 per cent less than the amount of commissions upon the receipts of his office during such term would have been. When thus readjusted to an amount as nearly as practicable the same as, but not exceeding, such average compensation in commissions for the term just ended, the salary would be fixed or readjusted for the coming term.

PURPOSE AND EFFECT OF STATUTE OF 1883.

So far there is no controversy in this case; but the question now arises as to the extent to which the statute of 1883 changes the situation. One change is, of course,

apparent. The statute of 1883, having been passed several years subsequent to the repeal (in 1874) of the statute of 1864, providing for the compensation of postmasters by salaries instead of by commissions, of necessity relates to the readjustment of past salaries, whereas, as has been shown, the prior statutes relating to the readjustment of salaries of postmasters applied only to prospective salaries. This fact has been twice referred to, in passing, by this court as follows:

> * * * under the act of Congress of March 3, 1883, which authorized and directed the Postmaster-General in proper cases to make readjustments of salaries which should act retrospectively, * * * .
>
> *McLean* v. *Vilas*, *supra*, p. 87.
>
> It was not until 1883 that the Postmaster-General was authorized to readjust the compensation of postmasters and to make such readjustments retrospective.
>
> *United States* v. *Verdier*, 164 U. S., p. 216.

On this point the claimant and the defense also agree. But the claimant further contends—and here arises the sole question in this case—that by the statute of 1883 a new method of readjustment was provided; that by that statute it is contemplated that the Postmaster-General, on proper application made to him by any postmaster or late postmaster for readjustment of his salary for any biennial term included in the period from 1864 to 1874, should compare such salary with the amount which he would have received in commissions on the receipts of his office under the statute of

1854 during said term, and if on such comparison it should appear that the salary thus allowed was ten per centum or more less than such commissions, then to readjust the salary by stating and allowing such difference. The radical difference between the method of readjustment thus contended for and that prescribed by the statutes of 1864 and 1866, as interpreted by this court, is obvious. By the latter method the basis of comparison and readjustment of any salary is the eight quarterly returns of the postmaster immediately preceding the term for which the salary is adjusted. According to the claimant's contention this comparison should now be made between the salary to be readjusted and the eight quarterly returns of the term of the salary itself. What warrant is there for this contention? Counsel for claimant, in his brief which he has courteously furnished the defense in advance of the writing of this brief, seems to rest it on the intention of Congress to remedy the wrong which he alleges had been done to the postmasters in the operation of the prior statutes, and the alleged absurdity and injustice of applying to the readjustment directed by the statute of 1883 the rule of readjustments laid down in the statutes of 1864 and 1866, also upon the references of this court to the retrospective effect of the statute of 1883, quoted above. It would seem, however, that the primary foundation for this claim should be the statute itself; accordingly, the statute will be first considered.

Referring, then, to the statute of 1883, the rule of adjustment provided for therein seems to be unmistakably stated in the following language:

> * * * such readjustments to be made in accordance with the mode presented in section 8 of the act of June 12, 1866, and to date from the beginning of the quarter succeeding that in which such sworn returns of receipts and business or quarterly returns were made. * * *

"The mode presented in section 8 of the act of June 12, 1866," has already been shown to consist in using as a basis of the readjustment the eight quarterly returns immediately preceding the term of the salary to be readjusted, and this mode the statute of 1883 directs to be adopted in the readjustments authorized thereby. This is made the more emphatic by the further requirement that such readjustments are "to date from the beginning of the quarter succeeding that in which such sworn returns of receipts and business or quarterly returns were made."

It is difficult to perceive how the salary for any term of a postmaster could be readjusted according to the method contended for by the claimant by using the eight quarterly returns of the term itself, during which said salary was paid, as a basis for the readjustment and yet have such readjustment date from the beginning of the quarter *succeeding* that in which such sworn returns or quarterly returns were made. That would seem to be a readjustment that does not readjust.

INTENT OF THE STATUTE.

Counsel for claimant is emphatic in asserting that a grievous wrong had been done the postmasters by the

changing of their compensation from commissions to salaries, by reason of the general greatly increased business of the various post-offices, whereby the compensation by commissions upon the receipts would in most instances have been largely in excess of the salary allowed; and this wrong, it is contended, the prior statutes relating to the readjustment of salaries of postmasters failed to right, so that the statute of 1883 was manifestly passed for that express purpose, and to hold otherwise would be to make the statute not only a vain thing but an absurdity.

It may be that in a sense there is some foundation for this assertion, but it is very certain that Congress had a right to change the method of compensation of postmasters from commissions to salaries, and that thereby no wrong whatever was done to anyone.

The salaries thus paid were the legal compensation for the services of the postmasters, and any increase thereof through statutes of readjustment is in the nature of a gratuity. As stated in the Verdier case with relation to the claim of Verdier as postmaster for a readjustmented salary, "he had performed services for which an indebtedness was subsequently voluntarily created by the Government."

United States v. *Verdier*, *supra*, p. 219.

At all events, Congress, by its statutes of 1864 and 1866 relating to readjustment of salaries of postmasters, took cognizance of no other injustice to the postmasters than that the adjusted salary of a postmaster might prove to be less than the average of the commis-

sions for the eight preceding quarterly returns of his office, which were used as a basis for determining or adjusting such salary. And the statute of 1883 is in terms enacted to direct the readjustment of such salaries as had not been theretofore readjusted under the provisions of the act of 1866. Here, then, is the specific wrong, if it may be so termed, which the statute was intended to correct, to wit: The neglect of the Postmaster-General to readjust the salaries of the postmasters pursuant to the statute of 1866. And there is no indication of any sort in this statute of the recognition by Congress of any other wrong or injustice to the postmasters nor of an intention to direct any other remedial action.

Finally, we have the distinct approval of Congress of the interpretation of the statute of 1883 placed upon the same by the Post-Office Department and here contended for by the Government, in the act of August 4, 1886 (24 Stat., c. 903, p. 307, sec. 8). This section, by which appropriation is made for the payment of readjusted salaries of postmasters, contains the following proviso:

> *Provided*, That the method of reviewing and readjusting the salaries of postmasters and late postmasters of the third, fourth, and fifth classes, under the classification of the act of July first, eighteen hundred and sixty-four, during the period between July first, eighteen hundred and sixty-four, and July first, eighteen hundred and seventy-four, which has been practiced in the Post-Office Department under and since the

act of March third, eighteen hundred and eighty-three, entitled "An act authorizing and directing the Postmaster-General to readjust the salaries of certain postmasters in accordance with the provision of section eight of the act of June twelfth, eighteen hundred and sixty-six," by which all such reviews and readjustments have been prospectively for the biennial periods provided for in the said act of July first, eighteen hundred and sixty-four, upon the basis of the quarterly returns of postmasters during the preceding biennial periods, respectively, whenever the salary actually paid was ten per centum less in amount than such salary should have been if adjusted correctly upon such returns by computing what the commissions upon the same would have been under the act of June twenty-second, eighteen hundred and fifty-four, and averaging the amount thereof annually, as directed by the act of July first, eighteen hundred and sixty-four, for fixing salaries, is approved and ratified as a correct administration of the aforesaid act of March third, eighteen hundred and eighty-three, and of all other acts applicable thereto; and that the several readjustments which have been made are ratified as a correct disposition of the several claims which have been considered and disposed of, and for which this appropriation is made; * * * and that in considering all claims not yet readjusted the same method shall be pursued which is hereby approved; and any and every different method of readjustment of salaries of such postmasters and

late postmasters during the period between July first, eighteen hundred and sixty-four, and July first, eighteen hundred and seventy-four, than is herein approved is hereby prohibited. * * *

AS TO RETROSPECTIVE READJUSTMENTS.

As for the stress which the counsel for claimant places upon the references made by this court to the retrospective effect of the statute of 1883, which have been quoted above, it seems inconceivable that any other meaning should be attached thereto than that plainly expressed, namely: That by the statute of 1883 authority was given to the Postmaster-General to make readjustments of the salaries of postmasters which should operate retrospectively. As has been already stated, this was an obvious comment and was made merely in passing, without reference to the determination of any question before the court. In neither case, indeed, was the question of the rule for adjustment prescribed by the statute of 1883 before the court in any form whatever. In the case of *McLean* v. *Vilas* (24 U. S., p. 87), in which this remark was first made, the only question was as to the duty of the Postmaster-General to readjust the salary of the claimant, and the case went off upon that point only.

In the *Verdier case* (164 U. S., p. 216), where this comment is again made, the salary of the claimant had been readjusted by the Postmaster-General pursuant to the statute of 1883, and beyond all question in the

manner complained of in this case, since it is a matter of public record that no other method has ever been adopted by the Post-Office Department. At any rate, no question regarding the mode of readjustment was raised in the case, the sole question having any reference to the readjustment being whether the claimant should be allowed interest upon the increased amount of his salary as readjusted.

It is incredible that this court should have rendered so important a decision as the establishment of a new rule for the readjustment of salaries of postmasters without having the question in any sense before the court, without any discussion of the question by counsel for either side, without any analysis of the question by the court, and within the limits of a brief paragraph.

Whilst this question has never before been squarely before this court, it was incidentally raised in the case of *McLean* v. *Vilas* (*supra*), and so far as any intimation at all was given therein it was in approbation of the rule of readjustment which has heretofore obtained in the Post-Office Department. On page 88 of the opinion in that case appears the following statement:

> Counsel for the defendant assert the proposition that, under the statutes on this subject, which will hereafter be referred to, there was no obligation resting upon the Postmaster-General to readjust the salaries of these officers oftener than once in two years; that such readjustment, when it took place, could only establish the amount of the salary for two years

> thereafter, and that no such readjustment could be made unless there were quarterly returns for two years preceding such readjustment on which it could be based.

The opinion goes on to review the various statutes relating to readjustments, including the statute of 1883, and then proceeds as follows:

> With the answer of the Postmaster-General are presented as exhibits two opinions of Attorney-General Brewster, given in response to requests of the Postmaster-General; also an opinion by the Assistant Attorney-General for the Post-Office Department, and the opinion of Postmaster-General Gresham in a letter to Hon. Frank Hatton, First Assistant Postmaster-General. All of these sustain the proposition already stated on behalf of the defendant.

SALARY OF CLAIMANT ALREADY CORRECTLY ADJUSTED.

Acting in accordance with the view of the statute taken by the Post-Office Department, as set forth above in *McLean* v. *Vilas*, and pursuant to the uniform custom of the Department in the readjustment of salaries of postmasters, the application of the claimant for readjustment of his salary was considered by the Postmaster-General and his salary readjusted as set forth on page 8 of the record. Upon this readjustment it was determined that the salary for the first term could not be readjusted for the reason that there was lacking a record of the eight quarterly returns immediately preceding the term; that for the second

and third terms there was due to the claimant upon such readjustment $186.90; that for the fourth term there was nothing due the claimant for the reason that the salary received by him was not ten per cent. less than it would have been upon the basis of commissions, under the act of 1854, upon the receipts of his office as shown by the eight quarterly returns immediately preceding such term.

It is respectfully insisted that this readjustment was made strictly in accordance with the terms and intent of the statute of 1883, under which this claim is brought, and that the claimant having been paid the amount thus allowed him upon such readjustment, his petition should have been dismissed by the Court of Claims.

LOUIS A. PRADT,
Assistant Attorney-General.

○

No. 532. 225

Br. of Spalding for Appellee

Office Supreme Court U.S.
FILED
MAY 1 1901
Clerk.

Filed May 1, 1901.

Supreme Court of the United States.

OCTOBER TERM, 1900.

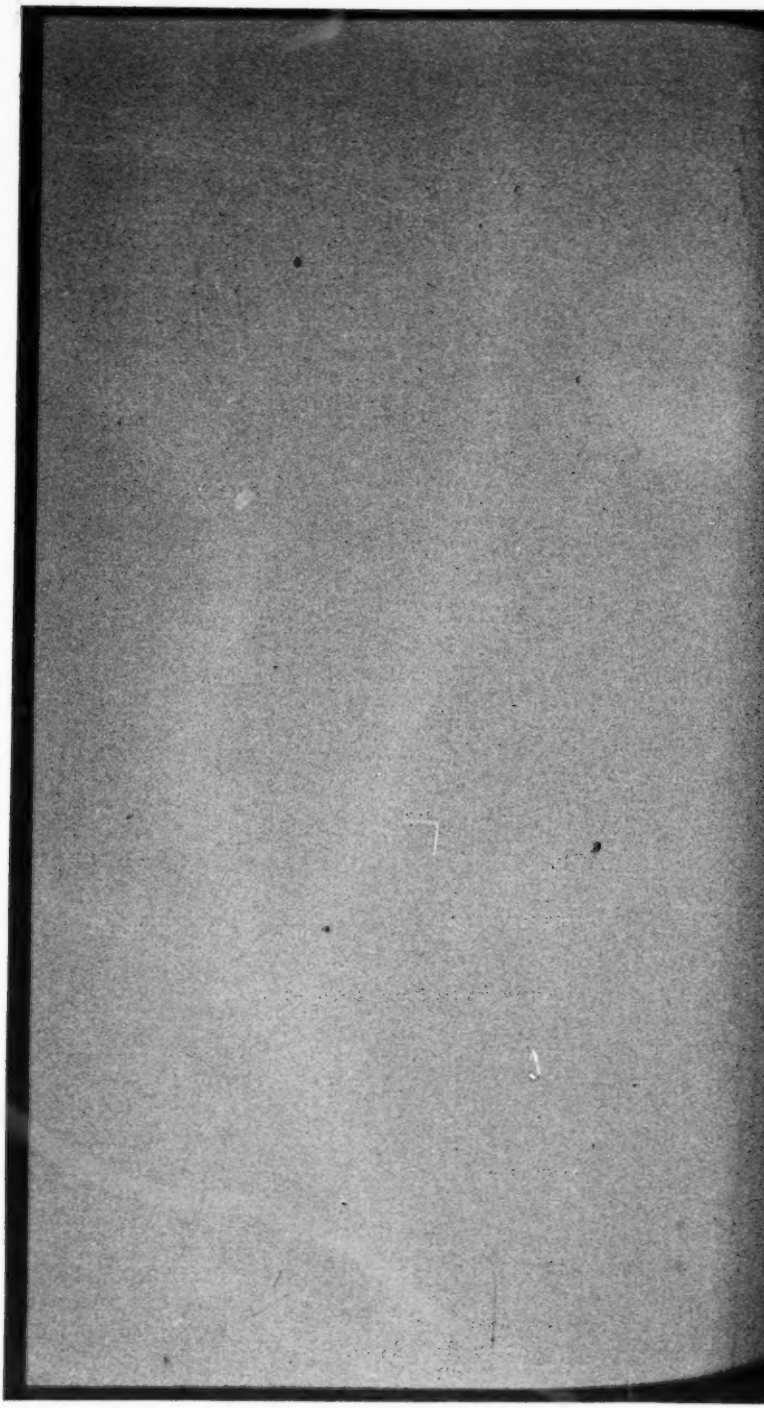
THE UNITED STATES, *Appellants*,
v.
WILLIAM T. EWING, *Appellee*. } No. 532.

Appeal from the Court of Claims.

BRIEF OF ARGUMENT ON BEHALF OF APPELLEE.

HARVEY SPALDING,
Attorney for Appellee.

BYRON S. ADAMS, PRINTER.



Supreme Court of the United States.

OCTOBER TERM, 1900.

No. 532.

THE UNITED STATES, APPELLANT,

vs.

WM. T. EWING.

APPEAL FROM THE COURT OF CLAIMS.

BRIEF OF ARGUMENT FOR CLAIMANT.

STATEMENT.

In 1888 suit was brought in the Court of Claims to recover under the act of 1883 (Chapter 119), the claimant's salary by commissions on the basis of the act of 1854 as postmaster at Gadsden, Ala., in each of his biennial terms of service between July 1, 1866 and July 1, 1874, less the amount of salary adjusted and paid under the salary act of 1864 for each of said terms, each of said adjustments having been made at the beginning of each of said terms prospectively, not upon the returns of the term for which the salary was afterwards paid, but upon conjectural estimates, made by the Postmaster-General in advance of the receipt of the returns.

Before suit was brought, the claimant made a continuous effort from 1883 to 1888 to prevail on the Postmaster-General to report for payment the amount of his said salary by commissions less the amount of his paid conjectural salary for each of said four biennial terms of service. All his efforts were unavailing.

On August 4, 1886, at the request of the Postmaster-General, Congress by statute barred all like claims not presented to the Postmaster-General prior to January 1, 1887.

Many thousands of like claims from all over the United States were presented to the Postmaster-General prior to January 1, 1887, and as in this case, report of the salary by

commissions of each postmaster in each biennial term of service, less the conjectural salary paid, was denied by the Postmaster General.

There were consequently filed by State schedules in the Court of Claims 16,523 of like claims, seeking to recover from the United States debts due and payable, estimated in the aggregate to amount to $2,530,000.

As a result of a continuous struggle in the Court of Claims, on behalf of these thousands of claimants, backed by the statute which conferred jurisdiction on that Court in every such case, from 1888 to late in 1900, a period of more than twelve years, a report by the Postmaster-General in this one case to the Court of Claims, was effected of the amount of claimant's salary by commissions in each of said biennial terms of service, and the amount of conjectural salary paid him under the act of 1864, in each of said terms. That report is stated in detail at the bottom of page 16 of the record, and as stated in Finding III, on page 6 of the record, the total of the salaries of the claimant for the four terms by commissions, is $4,037.73, and the total of the conjectural salaries paid for the four terms, including an additional sum of $91.90 paid in 1884 on account of salary in the second term, and another sum of $95 paid in 1884 on account of salary in the third term, is $2,772.90 (see Finding II, page 6 of record). So that the excess of salaries by commissions in all the terms over the total salaries paid the claimant in all the terms is $1,264.83 (Finding III). This is the one and only case from amongst all the thousands of these claims in which the Postmaster-General has consented to report the readjusted salaries of the applicant postmasters.

Without a report of the readjusted salary account of a postmaster under the statute of 1883 by the Postmaster-General, no adjudication could be made by the Court of Claims under the statute giving that Court jurisdiction in such cases. The Postmaster-General for seventeen years has defeated the exercise of the plain rights of all these thousands of citizens of the United States, theoretically reputed to be sovereigns, to have a judicial determination of their contract property rights secured to them by the statute of 1883, by the Court of Claims.

As is publicly known, the statute of 1883 is the fruit of a controversy produced by the administration by the Postmaster-General of the Postmaster's Salary Act of 1864. It is the remedy granted by Congress for the wrongs suffered by the postmasters by the method of administration of the statute of 1864.

The wrongs complained of by postmasters which secured

the statute of 1883, were set forth, limited and described by postmasters and on their behalf continuously from 1866 to 1883, a period of seventeen years. During this period of seventeen years there was no executive officer of the Post Office Department charged with any duty of regulating the pay of postmasters, ignorant of the exact nature of the wrong complained of by postmasters.

When, at the request of the Postmaster General, Congress committed to him the duty of guessing what the receipts and actual earnings of postmasters would be for terms of two years in the future, predicating his guesses upon his knowledge of what the receipts and earnings of the postmasters at postoffices were for the period of two years before the guesses were made, Congress also committed to him the duty to repeat these guesses within the period of two years as that period progressed with sufficient frequency, so that in those cases of rapid increase or decrease in the receipts, there should be no ground on the part of the postmasters or on the part of the Government for complaint. Fully aware of this purpose of the statute of 1864, the Postmaster-General on March 1, 1866, published the following regulation:

> "Sec. 474. The salaries of postmasters are established upon the basis of ALL THE REVENUE of their post offices during the two years preceding the passage of the law—i. e., 1863 and 1864. Box rents are included in these revenues. Every postmaster receives in the form of salary as much compensation as he formerly received from commissions and box rents."
>
> "Sec. 475. Any postmaster may put up boxes in his office. These boxes are his private property, but the revenues thereof must be paid over to the Department. Under the system of salaries, the postmaster receives the benefit of these revenues as effectually as he could under the system of commissions and emoluments."
>
> "Sec. 476. Where the justice of the case demands, the Postmaster-General has the authority to readjust salaries oftener than once in two years, and under this provision of law, all inaccuracies and inadequate or excessive allowances of salary can be readily corrected; so that where there is an extraordinary increase or decrease in box rents within the two years, the salary may be readjusted so as to meet the requirements contemplated by the law."

And on June 12, 1866, Congress ordained that there should be a readjustment of the salary of every postmaster paid less

than $2,000 per year whenever his returns showed his paid salary to be ten per centum less than his salary by commissions would be. (Stat. 1866, Chapter 114, June 12, 14 Stat. 59, Sec. 8.)

When, in the thousands of cases in which the postal receipts were constantly increasing, these regulations and the statute of 1866 were ignored, and large portions of their earnings taken from the postmasters by the Postmaster-General, who was all-powerful, for the Auditor could not credit the postmaster with a dollar not embraced in the prior order of the Postmaster-General, the victims were conscious of the most inexcusable wrong ever inflicted by a Department policy systematically upon people wholly powerless to protect themselves. The complaints in every such case had to be addressed to the Postmaster-General, in whom resided supreme power and who had previously inaugurated the policy of ignoring his quoted regulations and the statute of 1866. This policy was perfectly illustrated by the victims who first wrote to the attorney of the postmasters upon this subject. Frank Danford, of Girard, Kansas, complained that he was appointed postmaster at that point on a railroad, and that a great amount of mail matter was delivered to him so that he had to hire an office and a clerk, and that under these circumstances, he was notified that his salary had been fixed at $12 per annum. Whereupon he promptly sent his resignation to the Postmaster-General, but he was made to pay out hundreds of dollars for clerk hire, office rent and expenses of handling the mail for nearly a year, for neither he nor his sureties could be relieved of responsibility until his successor was appointed and qualified. This case and those that followed aroused the indignation of the executive of the Post Office Department. Thereafter that executive watched for an opportunity to retaliate. Later this opportunity came. For the postmasters, the attorney had worked many years so that his outlay of money and labor represented a small fortune and the whole of this outlay was incurred on the faith of fee contracts with the postmasters. There are many who believe that such contracts would be absolutely worthless, and that no collection whatever on such contracts could be effected if the executive of the Department should send the warrants when issued to the claimants and instruct them to pay no fees, coupled with an implied charge of fraud against the attorney. There can be no question but that when this was done in the beginning of payments to postmasters in 1885, the absolute ruin of the attorney was contemplated and expected. This Departmental wrath and vengeance, in its various manifestations during thirty years, will

hardly be understood without a consideration of the method by which the policy of a great Department, after it has been definitely determined upon, is enforced, and the reasons which render the use of unlimited Departmental power to enforce the same when subsequently that policy is challenged as a violation of law, and of the property rights of the people.

Between 1864 and 1874, as earnings of postmasters guessed at in advance by the Postmaster-General, fixed in the form of salaries adjusted under the statute of 1864, there was paid to postmasters an aggregate of $46,000,000. Had not postal regulations sections 474, 475, and 476 herein quoted, and the statute of June 12, 1866, herein cited, been disregarded, postmasters would have been paid in the aggregate in that ten years $50,000,000 instead of $46,000,000. The controversy of seventeen years which secured the statute of 1883, took form and organization and succeeded under the control of the attorney. The sole basis of this controversy was the continuing charge that the executive of the Post Office Department had deliberately wronged postmasters out of several millions of dollars of their earnings. The then executive of the Department failed in an attempt to secure the veto of that act after its passage by both houses, this on the third day of March, 1883.

The executive of the Department was shocked by the enactment of this statute. But soon after its enactment, Postmaster-General Gresham came into office, and he formulated and published throughout the United States the declaration in substance, that the statute of 1883 was a contract made by Congress, to pay the deficiencies of ten per cent. or more, which might be found to exist in the conjectural salaries paid to postmasters upon a restatement of salaries of such postmasters upon the full returns of each biennial term of service, upon the basis of the statute of 1854. All the forms necessary to thus comply with and carry into effect the statute of 1883, were prepared by his orders (See Finding VI, of the record, page 9 to 13). This action by Postmaster-General Gresham was a complete, exact and full recognition of the rights of postmasters as claimed by them, except that in those few cases in which a new post office was established during a biennial term, General Gresham held that no account could be stated to effect the payment of the deficiency if any existed. General Gresham having made this record left office, and was succeeded by the exponent of the Department wrath and vengeance policy. The executive furnace seemed then to become very hot in the effort to destroy the statute of 1883, which was credited as the fruit produced by the work of the attorney. This effort to destroy the statute was an undertak-

ing surrounded with great difficulty for it could only be accomplished under color of carrying it into effect. To salute and stab to death this statute was the work then undertaken. How could forms ordered by General Gresham, upon which to state these plain contract accounts and his plain and explicit declaration of the nature of this contract, be used to defeat that plain contract?

OF THE SECRET DEPARTMENTAL MANIPULATION OF THE SALARY ACCOUNTS OF POSTMASTERS BY WHICH THE DEFEAT OF THE STATUTE OF 1883 WAS ATTEMPTED.

By the statute of 1854 (Chapter 61, June 22, 10 Stat. 298), and prior acts of Congress, it will be seen that it was never possible before 1864 to deprive any postmaster of any part of his earnings because the law gave him the whole of the box rents he collected, and a prescribed number of cents out of each dollar of postage he collected, and this by law he was authorized to retain out of the receipts of his office.

The controversy, born of the nullification by the Postmaster-General of postal regulations, sections 474, 475 and 476 of 1866, and of the statute of 1866, compelled in 1874 the return to the just methods of compensating postmasters in force prior to the salary act of 1864. The statute of 1883, Chapter 142, required all non-presidential postmasters as did the act of 1854 to be paid by commissions which they retained out of the postal receipts; and the pay of presidential postmasters was made absolute each year by the total office receipts the year prior. Thus before 1864 and after 1874, it was never possible to manipulate the pay accounts of postmasters so as to deprive them of a single dollar of their earnings. The guess work by the Postmaster-General, by which postmasters lost about $4,000,000 of their earnings, between 1864 and 1874, was under the statute of 1864 absolutely without remedy because the guesses were made by the Postmaster-General appointed by statute to do the guessing. In this he had exclusive jurisdiction. No Court and no other officer could lawfully guess about the salaries of postmasters while the statute of 1864 was in force. But no statute except that of 1864 ever authorized salaries of postmasters to be fixed by guess of any executive officer and that statute was repealed long before the statute of 1883 was enacted. The only method by which the guess of the Postmaster-General was under the act of 1864 lawful, was to guess as to what the salary should be for a term in the future at the date the guess was made.

Such a thing as a guess as to what a postmaster's salary should be for a past term of service was never heard of, for

the plain reason that in every instance the returns for the past term made absolutely certain what the salary of the postmaster should be. The statute of 1864, prohibited the naming of a salary for any postmaster for a past term, and ordered that no salary of a postmaster should be stated except for a term in the future. For this reason the statute of 1883 ordered that in certain cases of loss by naming salaries for future terms that the salary for such terms in the past should be restated. By this act the Postmaster-General was without power to do anything at all except to restate salary accounts of postmasters in certain cases for past terms of service, and to report the results of such restatement of salary accounts.

A restatement of a postmaster's salary account could not be made under the statute of 1883 without showing the precise amount of salary by commissions in the biennial term covered by the restatement, and with it the precise amount of conjectural salary stated and paid in that term under the act of 1864. This is demonstrated by the case before the Court. An account was stated in each of four biennial terms of service and each of the accounts stated made the precise amount of the claimant's salary by commissions to appear in that term, and also the exact amount of the conjectural salary under the statute of 1864, which was paid, appear, the exact deficiency of the paid salary contrasted with the salary by commissions in each term thus appearing. The Department animosity could be gratified only by the defeat of the payment of these acounts, which in the very nature of the case exhibited the exact amount due on each and every account stated in all the cases in which the conjectural salary paid was ten per cent. or more less than the salary by commissions under the statute of 1883, by resorting to some method or rule of manipulating the accounts by which it should be falsely shown that nothing was due on any such account. It is manifest that after stating any such accounts it would not be possible to avoid or decrease the credit of that account in any other way than by substituting for it a smaller credit as the true credit. The method by which $4,000,000 was lost to postmasters between 1864 and 1874, is described as follows: The Postmaster-General took the commissions on the smaller returns between 1864 and 1866, as a basis of fixing the salaries of postmasters on the larger returns between 1866 and 1868, and he took the smaller commissions of the postmasters on the smaller returns between 1866 and 1868, to fix the salaries of postmasters on the larger commissions between 1868 and 1870, and he took the smaller commissions on the small receipts between 1868 and 1870 to fix the salaries of postmasters upon the larger commissions between 1870 and 1872,

and he took the smaller commissions between 1870 and 1872 to fix the salaries of postmasters on the larger commissions between 1872 and 1874.

To defeat the payment of the whole of the alleged $4,000,000 of deficiencies in the pay of postmasters provided for by the act of 1883, it was only necessary for the Postmaster-General to restate the smaller salary on the smaller receipts of each of the biennial terms mentioned as the salary of the postmaster on the larger commissions and receipts of each succeeding biennial term. This was what was done. The smaller credit of one term was, by authority of the Postmaster-General, stated as the true credit in the term in which that true credit was much larger. He actually suppressed the true and larger credit and substituted therefor the smaller credit of a term prior. In this way it became feasible, in the absence of any conscience, to notify thousands of postmasters to whom debts were due and payable that nothing was due them. This was done.

The method of this substitution of small credits for large credits is shown on pages 14 and 15 of the record. At the top of page 14, there is an account stated exhibiting accurately the claimant's readjusted salary for the term between July 1, 1866 and July 1, 1868, on the receipts returned by the claimant for that term. The amount of that restated salary as stated is $531.90. Against this credit of $531.90 there is fraudulently charged $440, which is the amount of salary originally paid the claimant not between July 1, 1866 and July 1, 1868, but between July 1, 1868 and July 1, 1870, thus showing a sum of $91.90 due the claimant, whereas there is actually due him in the term between July 1, 1866 and July 1, 1868, $531.90 less $146, the true amount due being $385.90 and not $91.90. This manipulation of the claimant's restated salary account is fraudulently stated to be not a readjustment of his salary between July 1, 1866 and July 1, 1868, but a readjustment of his salary between July 1, 1868 and July 1, 1870.

At the bottom of page 14 there is a readjustment of the claimant's salary on his returns between July 1, 1868 and July 1, 1870, stated at $1,015, against which is fraudulently charged not the salary of $440 paid him for that term under the act of 1864, but the sum of $920, paid him not between July 1, 1868 and July 1, 1870, but between July 1, 1870, and July 1, 1872, so that it falsely appeared that a credit in addition to the former salary paid existed of only $95, whereas the true credit in that account is $1,015 less $440, amounting to $575. This manipulation of this account is falsely stated to be not a readjustment of the claimant's salary between July 1, 1868

and July 1, 1870, but a readjustment of his salary between July 1, 1870 and July 1, 1872.

On top of page 15 there is a readjustment of the Claimant's salary on his returns between July 1, 1870 and July 1, 1872, of $1,179.67, against which is falsely charged the salary of $1,080 paid him between July 1, 1872 and July 1, 1874, so that it is falsely made to appear in this account that nothing is due the claimant whereas there is due him $1,179.67 less $920, the amount of salary paid him in the term between July 1, 1870 and July 1, 1872, under the act of 1864. This account is also falsely stated to be the readjustment of the claimant's salary between July 1, 1872 and July 1, 1874, whereas it is a readjustment of his salary between July 1, 1870 and July 1, 1872. These illustrations show the method by which the executive of the Post Office Department perverted the forms prepared under General Gresham's orders to carry the statute of 1883 into effect to defeat compliance with that statute, and the accounts show exactly the method by which the executive manipulated the same to defeat General Gresham's orders in which he always specifically declared to the public the statute of 1883 to be a contract to pay the difference in each biennial term of service between what was paid the postmaster and what he would have received as commissions under the act of 1854.

This systematic manipulation of many thousands of salary accounts of postmasters accomplished a fraud upon the law of dimensions probably never before reached in any kindred transaction in any executive department. The executive named this transaction a prospective readjustment of salaries of postmasters and affirmed that it was done by authority of a construction of the statute of 1883 by the Attorney-General, by the Postmaster-General, and by the Supreme Court of the United States. This method of manipulation of the salary accounts, if confined to the many thousands of cases in which the postal revenues increased from term to term, thus creating deficiencies in the guessed at salaries, under the act of 1864, would have produced no payment unless by mere chance or accident. If there had not been conditions as to the amount of postal revenues returned as compared with the guessed at salaries under the act of 1864, the reverse of the conditions at those offices constantly increasing in receipts, the Department by this manipulation would have been enabled to report complete blank results of the statute of 1883. In other words, the Department could in such case have reported nothing due any postmaster in the United States under that statute.

The following illustrations show the method by which pay-

ment of all the debts due and payable under the statute of 1883, was defeated:

	Terms of Service.				
	1864 to 66	1866 to 68	1868 to 70	1870 to 72	1872 to 74
Salary by Comms.....	$200.	$400.	$800.	$1,600.	$3,200.
Guessed at salary.....	100.	200.	400.	800.	1,600.
Deficiency.....	$100.	$200.	$400.	$800.	$1,600.

The Postmaster-General first had all these accounts showing the salary by commissions in each term stated and then proceeded as follows:

He ignored the deficiency in the first term and defeated the payment of the deficiency in the second term by substituting the commissions in the first term of $200 for the $400 in that term. In the third term he defeated the payment of the $400 deficiency by substituting for the $800 commissions in that term the $400 commissions in the second term. In the fourth term he defeated the payment of the $800 deficiency by substituting for the $1,600 salary by commissions in that term the $800 salary by commissions in the third term. He defeated the payment of the deficiency of $1,600 in the fifth term by substituting for the $3,200 salary by commissions in that term the $1,600 salary by commissions in the fourth term.

The case before the Court is also a complete illustration of an attempt to guess out of existence debts due postmasters under the act of 1883 by suppressing the stated accounts by which the debts due and payable are evidenced.

But in this undertaking the executive of the Department became worried and burdened by an enormous load. The maniplation of accounts by which the stated credit on the returns of one term was substituted for the stated credits on the returns of the succeeding term produced results which were probably not looked for at the beginning of the enterprise. These results occurred because there were many thousands of post offices where the postal revenues decreased from term to term as to which the Postmaster-General had originally approximately complied with the regulations by which the guessed at salary was reduced from time to time so as to conform approximately to the commissions on the decreased receipts. By this adopted manipulation all the postmasters at these offices decreasing in receipts were awarded, while the manipulation was progressing gratuities.

In the beginning this work was entered upon with courage

and cheer because it was supposed that it would defeat the payment of most or all of the $4,000,000 debt. As time wore on the burden of paying thousands of gratuities became very great and in the midst of reporting these gratuities for payment the clerk in charge stopped and laid away thousands of these fictitious accounts without payment.

The gross disregard of law in this work is illustrated by the following cited cases of payments of bounties.

The postmaster at Litchfield, Ill., for his services between 1872 and 1874 was paid a bonus of $1,183.32. His total commissions being $3,600 and the salary paid him under the act of 1864 being $3,400, to which was added the said sum of $1,183.32. (See H. Ex. Doc. 153, 48th Cong. 2d Session, P. 105.) The postmaster at Mound City, Ill., whose commissions for the term between 1866 and 1868 were $1,466.44, and who was paid under the act of 1864 $2,000 was paid a bonus of $1,192.42 in addition to the original over-payment. (H. Ex. Doc. 32, 50th Cong. 1st Session, P. 21.) The Postmaster at Bowling Green, Ky., whose original commissions between 1866 and 1868 amounted to $3,400, and whose pay under the act of 1864 was $3,200 was paid a bonus of $1,088.76 for that term. (H. Ex. Doc. 31, 50th Cong. 1st Session, P. 14.) The postmasters at Havre de Grace, Md., whose commissions between 1866 and 1868 amounted to $1,733, and whose original pay, act of 1864, was $1,800, received a bounty of $6,022.10. (H. Ex. Doc. 153, 48th Con. 2d Session, P. 126). The postmaster at Springfield, Mo., whose commissions between 1866 and 1868amounted to $3,600,and whose pay,act of 1864,was $3,800 received a bonus of $2,214.29. (H. Ex. 31, 50th Con., 1st Session, P. 60.) The postmaster at Old Point Comfort, Va., whose commissions between 1866 and 1868 amounted to $2,060, and who was paid under the act of 1864, $1,733, received a bonus of $2,790.17. (S. Ex. Doc. 253, 50th Cong., 1st Session, P. 21.) The postmaster at New Creek, W. Va., whose commissions between 1866 and 1868 amounted to $628, and who was paid under the act of 1864, $640, received a bonus of $2,014.42. (H. Ex. Doc. 225, 49th Cong. 1st Session, P. 89.) The postmaster at Harpers Ferry, W. Va., whose commissions between 1866 and 1868 were $1,280, and who was paid under the act of 1864, $1,480, received a bonus of $5,246.48. (S. Ex. Doc. 253, 50th Cong., 1st Session, P. 21.)

In the foregoing eight cited cases gratuities were paid by the Postmaster-General by substituting the commission accounts between 1864 and 1866, for the commission accounts between 1866 and 1868, aggregating $21,751. 96.

From the date General Gresham left office and was succeeded by the exponent of Department wrath the work of

publishing throughout the country the statute of 1883, to be a contract to pay the deficiencies of ten per cent. or more found to exist in the guessed at salaries of postmasters, went on, while notices to those who had lost more than 10 per cent. of their earnings by the guessed at salaries were systematically sent to the victims stating that it had been found that nothing was due them. Statements of accounts by commissions also proceeded upon decreased receipts showing full or over-p ments by guessed at salaries, act of 1864, and notices were sent to those postmasters who returned decreased receipts and were originally paid in full that additional salaries were due them, the amounts reported as due being the excess of the commissions of the prior terms over the salaries paid in full on decreased receipts in the succeeding term. This went on from 1884-5 to 1888-9, in the face of unnumbered protests and remonstrances, and until the strangest Departmental transaction that ever occurred wore itself out. This condition of wrath in the Department, out of which this action described was born, seems to have originated by the exercise of supreme power under the act of 1864 as to the pay of postmasters. This statute was secured by representations that the same pay secured to postmasters by the statute of 1854 would be continued to postmasters under the act of 1864. Following this the Postmaster-General was enabled under the statute of 1864 to exercise supreme power because the postmasters were powerless to retain any compensation except what was dictated by the Postmaster-General. It was in this way and by the exercise of this power that the Postmaster-General transferred of the actual earnings of postmasters between 1864 and 1874 to the credit of his administration of the law about $4,000,000. Since that time every effort on behalf of the postmasters to reclaim their lost earnings has been met by Department wrath. It was never possible to reclaim the fund without legislation which should take away from the Postmaster-General the entire power exercised by him under the statute of 1864, so as to enable the postmasters who served between 1864 and 1874, before the law to stand on the same footing that postmasters always stood on as to their pay before 1864 and have always stood on since 1874. The act of 1883 took away from the Postmaster-General every vestige of power over the compensation of postmasters under the form of guess work or estimate of their pay. By the statute of 1883 the vice of the statute of 1864 wholly disappeared. No one knew this fact better than did the Postmaster-General himself, for on the 9th of June, 1883, and on February 17, 1884, and by circulars issued continually thereafter, he declared to the people the statute of 1883 to be a contract requiring ac-

counts to be stated of the deficiencies in the pay of postmasters described in the statute and to be paid. When he made these declarations he knew perfectly that in every such case the registered returns of every postmaster would show by a simple statement of accounts thereon the exact amount of the deficiency in the salary required to be paid by the contract of 1883, and that there could be no deviation or variance whatever as to the result in the statement of any such accounts.

And yet no one of these accounts has ever been paid. There has never been any means, however, to prevent payment, but by concalment of the accounts and the substitution of the accounts stated in one term for the accounts stated in another term and this substitution was only possible by keeping the whole transaction under cover.

These are grave statements concerning the action of officers in a great Department and they would not be made except for the reason that a law of Congress has been in this way set at defiance and the record truths of the whole transaction are in the Post Office Department.

The method of substituting accounts in one term for the accounts in the next term will be found stated by the Postmaster-General, himself, in his own words. In a letter of Postmaster-General Don M. Dickinson, dated September 12, 1888, and addressed to Hon. F. M. Cockrell, U. S. S., and printed as part of Senate report No. 2410, 50th Cong., 2d Session, will be found the following statement:

"The Attorney-General's interpretation was to the same effect, viz.: That the readjustments were to be made *prospectively* for two years and by *biennial periods*, as required by the act of 1864, and that the same were not to be made so as to allow postmasters for a given quarter or period the difference between commissions on the 1854 basis for that quarter or period when it would amount to 10 per cent. more than the salary received for that period. The salary for a given two years was to be determined by examination of the compensations and receipts of the business for the *preceeding two years*, and comparing the same with a commission for that preceeding biennial period."

(See page 4 of said report.)

The following statements of Postmaster-General Dickinson are on the bottom of page 6, and the top of page 7 of the same report:

"The law (acts of 1866 and 1883), as construed and administered made the method of readjustment thus, for example: In fixing the salary of a postmaster for two years, beginning July 1, 1870, the Department examined the returns rendered

from July 1, 1868 and July 1, 1870. On these commissions were computed. If the commissions on the basis of 1854 had been the basis of fixing the salary for 1870 to 1872 and would have given the postmaster 10 per cent. more than he actually received, then the postmaster who happened to be holding from 1870 to 1872 was paid the difference. * * *

"Instead of comparing the commissions which would result from the 1854 law, between 1868 and 1870, with the salary paid from 1870 to 1872, it is proposed to compare them with the salary paid between 1868 and 1870. This is, as I have endeavored to make plain, a radical departure from the law as it has been administered.

"In this connection, I beg you to examine the opinion of the Attorney-General, the much more concise letter of the Postmaster-General, and the decision of the Supreme Court reported in 124 U. S. reports, p. 86. The opinion of the Attorney-General and letter of the Postmaster-General are given at length in the transcript of record of case of McLean *vs.* Vilas, herewith submitted to you.

"Very respectfully,

"DON M. DICKINSON,

"Postmaster-General.

"Hon. F. M. Cockrell, U. S. Senate."

Then follows in full inclosed in Mr. Dickinson's letter the letter of the Postmaster-General dated June 9, 1883, addressed to Hon. Frank Hatton, First Assistant Postmaster General, which letter appears in full in the record of this case on pages 9, 10, and 11.

It should be noted, perhaps, in connection with this letter of Postmaster-General Dickinson that in it he states that 68,725 of these claims have been reviewed and his letter shows that in every review made an account was stated of the commissions for a biennial term on the basis of the act of 1854.

Thus the words used by the Postmaster-General in his letter of September 12,1888, show first that the payment of every and all deficiencies of 10 per cent. or more in the salaries of postmasters between 1864 and 1866 were denied. Second that the payment of all increases in the commissions of postmasters of 10 per cent. or more between July 1, 1866 and July 1, 1868, over the commissions at the same offices between 1864 and 1866 were denied. Third, that payment of all increases in the commissions of postmasters between July 1, 1868 and July 1, 1870 over the commissions at the same offices between July 1, 1866 and July 1, 1868 were denied. Fourth, that payment of all increases in the commissions of postmasters between July 1, 1870 and July 1, 1872 over the commissions at

the same offices between July 1, 1868 and July 1, 1870 were denied. Fifth, that payment of all increases of commissions of postmasters between July 1, 1872 and July 1, 1874 over the commissions at the same offices between July 1, 1870 and July 1, 1872 were denied. In other words, this statement of the Postmaster-General is equivalent to the specific statement that of an aggregate of several millions dollars deficiencies in the payment of postmasters in the five biennial terms mentioned no part of the same has been paid.

Sixth, that in all cases in which the receipts of postmasters between July 1, 1866 and July 1, 1868, decreased 10 per cent. or more, when compared with the receipts at the same offices between July 1, 1864 and July 1, 1866, as to which the Postmaster-General fixed the salaries of postmasters between July 1, 1866 and July 1, 1868, complying with the postal regulations not to exceed the reduced commissions for that biennial term, the Postmaster-General awarded to all such postmasters gratuities so as to increase their salaries above the commissions between 1866 and 1868 so as to equal the larger commissions on the larger receipts between July 1, 1864 and July 1, 1866.

Seventh, that in all cases in which the receipts at post offices between July 1, 1868 and July 1, 1870, decreased ten per cent. or more when compared with the receipts at the same offices between July 1, 1866 and July 1, 1868, as to which the Postmaster-General complying with the regulations made the salaries between 1868 and 1870 not to exceed the commissions the Postmaster-General claiming to comply with the act of 1883, increased the salaries of such postmasters by giving them gratuities so as to make the total salaries paid upon the decreased receipts equal to the larger receipts between July 1, 1866 and July 1, 1868.

Eighth. The Postmaster-General claiming to comply with the act of 1883, paid all the postmasters whose business decreased ten per cent. or more between July 1, 1870 and July 1, 1872, bonuses so as to make their salaries exceed the commissions on the smaller receipts at their offices and equal the larger commissions on the larger receipts at the same offices between July 1, 1868 and July 1, 1870.

Ninth. That the Postmaster-General at post offices decreasing in receipts ten per cent. or more between July 1, 1872 and July 1, 1874, paid the postmasters at such offices bonuses so as to make their salaries exceed the salaries by commissions and equal the larger commissions on the larger receipts at the same offices between July 1, 1870 and July 1, 1872.

Thus the Postmaster-General, speaking for himself, declared in 1888 that he had denied payment of deficiencies in

the salaries of postmasters throughout the United States under color of the statute of 1883, and that in lieu thereof, he had paid throughout the United States gratuities to other postmasters for the sole reason that from term to term the receipts of their offices decreased. And the sole reason for denying payment of deficiencies to other postmasters throughout the United States assigned by the Postmaster-General was because the receipts and commissions at their offices increased from term to term.

And the Postmaster-General cites as authority for this payment of gratuities and denial of payment of deficiencies, the decision of this Court in 124 U. S., page 86, and he also cites the construction of the law by Postmaster-General Gresham, dated June 9, 1883, which formed part of the record in the MeLean case in this court, as authority for denying payment of deficiencies and substituting the payment of gratuities. This he does in face of the explicit declaration of Postmaster-General Gresham, made in the following words:

"If, in fact, there are cases in which it appeared from the quarterly returns or from sworn reports of receipts and business that postmasters of the third, fourth, and fifth class at the biennial readjustment had their salaries fixed under the act of 1864, when, by an adjustment under the act of 1854, ten per cent. or more would have been added to their salaries, then under the act of 1883 such postmasters are entitled to whatever additional sum they would and should have received under the act of 1854."

These words of General Gresham could be complied with, in view of his denial of readjustments under the act of 1883, with greater frequency than for a whole biennial term, only by stating an account for a whole biennial term retrospectively on the basis of the act of 1854. In fact, the act of 1854 permits only the statement of a salary account of a postmaster retrospectively.

The Postmaster-General in citing the authority of this Court for paying bounties instead of deficiencies to postmasters seems to ignore wholly the decision of this Court in in the case of McLean, 124 U. S., page 86, to the effect as follows, viz.:

"Acting upon this suggestion, and under the act of Congress of March 3, 1883, which authorized and directed the Postmaster-General, in proper cases, to make readjustments of salaries, which should act retrospectively, McLean made a demand, etc."

When in this decision the Supreme Court decided that no readjustment of postmaster's salaries was authorized by the act of 1883 with greater frequency than once in two years, it

was determined absolutely by this Court that the statute of 1883, in proper cases, which proper cases were only those in which all the returns for a full biennial term showed that the paid salary was ten per cent. or more less than the salary by commissions, that every salary account should, under the act of 1883, be restated retrospectively in all the cases where the deficiency described existed.

The determination of the Postmaster-General to pay bounties to postmasters and to deny payment of deficiencies to other postmasters brought unnumbered protests from all parts of the country.

These protests are illustrated by the following protest, dated June 1, 1885, and addressed to Postmaster-General Vilas:

"Washington, D. C., June 1, 1885.

"Hon. W. F. Vilas, Postmaster-General.

"Sir: Referring to your resolve to adhere to the method of adjustment of postmasters' salaries now in progress in the Department, although there are many communications of mine on file showing the same facts and results, I desire to call your personal attention to the following statement:

"The method of adjustment now in progress is a review of biennial adjustments under the Original Act of July 1, 1864 (long since repealed),and is therefore wholly without warrant of law.

"The readjustments denied payment are those provided for in the Act of March 3, 1883, and such denial is in manifest disregard of existing law.

"Adjustments of salaries without warrant of law involve the payment, by the acts of the Postmaster-General, of money out of the Treasury without warrant of law, while denying payment of money to claimants, which the law commands to be done.

"The method of adjustment now in progress, if carried on to completion, will involve the payment, without warrant of law, of about $2,000,000, and leave the law in full force, which requires the payment to certain postmasters of the difference between the salary allowed and the commissions, where such difference amounts to ten per cent.

"The figures showing these results, when completed, will necessarily go before Congress and the country.

"I cite two cases by way of illustration, and all the adjustments made and paid are also referred to in verification. Congress and the people are as yet deceived, and the truth is only known to the extent that I have been able to make it known.

"J. K. McLean served as Postmaster at Florence, Kansas, from July 1, 1871, to July 1, 1872, and the commissions

amounted to $560; and the pay allowed was $7, being an
cess of commissions over pay of $553. The rule now follow
has been applied to his case, and denies him any allowa
whatever.

"Mr. W. T. Mackinson was postmaster at Lapidum, Ma
land, from July 1, 1866, to July 1, 1868, and his commissi
amounted to $154; and the pay allowed was $166, or $12
excess of commissions.

"The rule now being followed, which the newspapers
is to be adhered to, has been applied to Mr. Mackinson's ca
and he has been allowed and paid, *in addition* to the $
formerly allowed, $688.38.

"I present this letter as the last of my protests against t
course of action, and leave the responsibility for same who
with you.

"Respectfully,

"HARVEY SPALDING,

"Attorney for Certain Postmasters and Late Postmast
claiming under Act of March 3, 1883."

The executive of the Post Office Department was by th
protests profoundly impressed with the enormous respo
bility incurred by denying the report and payment of
debts due postmasters, fixed and defined in the statute
1883, and by paying out of the Treasury on his responsibil
millions of dollars of gratuities. Manifestly every accou
stated showing a deficiency in the pay of the postmas
would be paid as a matter of course if reported, and ev
proposition to pay a bounty would be denied if the bou
account had been reported. So it was that both classes
accounts were kept under cover, the executive of the P
Office Department withholding all these accounts from C
gress, used his personal influence as the head of the P
Office Department to secure legislation to relieve him of
sponsibility for the payment of bounties and for the den
of the payment of deficiencies in the salaries of postmaste

The following executive document of the House of Repres
tatives, Report No. 2376, part –, 49th Cong., 1st Sessi
illustrates this action of the executive:

49TH CONGRESS, 1st Session. } HOUSE OF REPRESENTATIVES. { REP'T 2376, Part 2.

SALARIES OF POSTMASTERS.

MAY 18, 1886.—Referred to the House Calendar and ordered to be printed.

Mr. BINGHAM, from the Committee on the Post-Office and Post Roads, submitted the following

VIEWS OF THE MINORITY:

[To accompany bill H. R. 6993.]

For a better understanding of the legislation proposed, the bill, as reported by the majority, is herewith made a part of this report:

A BILL amendatory of the act approved March third, eighteen hundred and eighty-three, entitled "An act authorizing and directing the Postmaster-General to readjust the salaries of certain postmasters in accordance with the provisions of section eight of the act of June twelfth, eighteen hundred and sixty-six," and confirmatory of the action of the Post-Office Department thereunder.

Be it enacted by the Senate and House of Representatives of the United States in Congress assembled, That the readjustments of the salaries of postmasters heretofore made by the Postmaster-General pursuant to the act approved March third, eighteen hundred and eighty-three, entitled "An act authorizing the Postmaster-General to readjust the salaries of certain postmasters in accordance with the provisions of section eight of the act of June twelfth, eighteen hundred and sixty-six," as said act was construed by the Attorney-General, are hereby in all respects ratified and confirmed as a compliance with the requirements of said act. All claims of postmasters or late postmasters which have been disallowed pursuant to such construction, or are thereby precluded from allowance, are hereby declared properly disallowed and barred. All claims hereafter considered shall be readjusted in accordance with said act so construed; and no claim shall be considered which is not presented *on or before January first, eighteen hundred and eighty-seven.* No action or proceeding shall be had or maintained in any court against any Postmaster-General by reason of his action in reviewing and allowing or disallowing any application in accordance with said construction under said act.

The merits or demerits of this measure are to be determined mainly by prior and existing statutes upon the same subject. If the legislation proposed is in exact accordance with the laws, then it is in accord with the vested rights of the postmasters and the rights of the United States, and is therefore superfluous and useless legislation. If it is in conflict with an existing statute, it is in conflict with the vested rights of postmasters and the rights of the United States.

It appears that since the organization of the Post Office Department the pay of postmasters at minor offices has been measured by commissions upon the actual receipts, with the exception of that period between July 1, 1864, and July 1, 1874. On the 1st of July, 1864, the Department obtained the sanction of Congress to a system of salaries. (14 Statutes, page 335.) It was understood that the pay of postmasters was not to be diminished by this system, but that postmasters

were to receive substantially the same compensation after that date in the form of salaries that they received before that date in the form of commissions. This assurance had in fact the solemnity of law, in the form of regulation, section 475, which was as follows:

"Under the system of salaries, the postmaster receives the benefit of those revenues as effectually as he could under the system of commissions and emoluments."

In order that this might be done, Congress, by the second section of the Act of July 1, 1864, gave authority to the Postmaster-General to readjust the salaries of postmasters every three months, and the Postmaster-General pledged himself by this regulation to maintain the salaries of postmasters, in cases of increase of business, on the basis of commissions. In violation of this authority and this assurance, the Department inaugurated a system of arbitrary prospective salaries for terms of two years, no matter how great and how rapid the increase of business. After the first adjustments of 1864, these prospective salaries were never fixed upon the basis of the commissions for the two years prior to the readjustment, as required by the second section of the Act of July 1, 1864. They were sometimes fixed on one quarter's business, sometimes on two quarters, and sometimes dictated without reference to the business. Congress was flooded with complaints upon the subject at the First Session of the Thirty-Ninth Congress. As to the nature and number of these complaints, see Book 70, page 1661, of the Proceedings of Congress. The sole ground of these complaints was that the prospectively-adjusted salaries afforded compensation in cases of increase of business much less than the commissions exhibited by the returns. To remedy this wrong Congress passed the Act of June 12, 1866. (14 Statutes, page 60, section 8.)

Notwithstanding this statute, great numbers of complaints were made, that the readjustments of salaries it provided for, with few exceptional cases, were not made, and that the arbitrary system of prospective adjustments was adhered to without the application of the remedy contained in the act of 1866, to remove the wrongs incident to the prospective system. The aggrieved parties sought to recover the compensation of which they were deprived by suits in the "Court of Claims." They failed in this, the "Supreme Court" having decided in McLean's case (95 U. S., page 750), that they could not sue therefor until the Postmaster-General's readjustment should be made. Thereupon these people exhibited to Congress the injustice they suffered by non-compliance with the law entitling them to a readjustment of salary, where, by the pros-

pective adjustment, the salary allowed was much less than the commissions. As a remedy for these wrongs, Congress, on the 3d of March, 1883 (22 Statutes, page 487), ordered a readjustment of salary to be made in every such case. The wrong complained of before the passage of the Act of 1866, and after the passage of that Act, and which was the sole reason for the passage of the Act of 1883, was always set forth in terms such as cannot be misunderstood, namely, that by a prospective adjustment of salary, the complaining postmasters had received salaries in amount much less than the commissions. There is no such thing, therefore, as a misunderstanding as to the nature of the wrongs the Acts of 1866 and 1883 were intended to remedy. Such wrongs are, in fact, described in unmistakable language in the body of each statute; and the order contained in each statute, to remedy such wrongs by a readjustment of salary in each case, is absolute. There can be no readjustment of salary under a statute ordering such readjustment, because the salary allowed is ten per cent., or more, less than commissions, except on the basis of commissions. Every application which has been presented to the Postmaster-General, in compliance with the terms of the Act of March 3, 1883, for the readjustment of the salary of the postmasters named, by operation of law creates a vested right to the readjustment applied for, if the Department records show that the salary allowed is ten per cent., or more, less than commissions. Upon the subject of the construction of this law General Gresham, on the 16th of February, 1884, published to the country the following syllabus, namely: "That in all cases in which it appears from the biennial readjustment of the salaries of postmasters of the third, fourth or fifth class that they received ten per cent., or more, less than they would have received in commissions under the Act of 1854, they are entitled, under the Act of March 3, 1883, to the difference between what was paid them and what they would have received as commissions under the Act of 1854. * * * It follows that a claimant under the Act of March 3, 1883, must show that the Acts subsequent to 1854 deprived him of ten per cent., or more, of what he would have received if those statutes had not been enacted and he had been compensated on the basis of the Act of 1854." * * *

This was made, by the publication of circular No. 1223, the official Department construction of the Act, in language as follows:

"The Act embraces such claims as postmasters or late postmasters may have for review of their salaries * * * wherein it shall appear that the salary allowed was ten per centum less than it would have been upon the basis of commissions

under the Act of 1854. Briefly stated, the period covered by the Act of March 3, 1883, dates from July 1, 1864 to July 1, 1874, and the review will be made * * * on returns for eight quarters immediately preceding the biennial adjustment."

In view of the manifest intent of the statute and of the official construction by the Department, which are in entire harmony, it is interesting to examine the propositions contained in this bill. The first proposition is to *ratify* and *confirm* the readjustments of salaries of postmasters heretofore made by the Postmaster-General. The second proposition is to declare all claims of postmasters or late postmasters which have been disallowed, or precluded from allowance, properly disallowed and barred. The third proposition is to *authorize* that readjustments shall be continued in accordance with some construction the character of which is not stated. The fourth proposition is that no actions shall be maintained against the Postmaster-General, by reason of his action in *allowing* and *disallowing* any application.

The first proposition contains an admission that the Department has committed acts not warranted by law. If such acts have been committed, the vested rights of the people have been violated and the rights of the United States have been violated. To attempt thus to ratify acts in violation of vested rights as proposed, is to ask Congress, by an *ex-post-facto* statute, to rob the people of vested rights. If the rights of the United States have been violated, the case presented is that of an Executive Department seeking immunity from Congress for violating the laws of the United States.

The second proposition is that Congress shall by statute declare that the claims of postmasters which may have been disallowed in violation of their vested rights and in violation of a statute recently enacted was the proper performance of a supreme duty on the part of an Executive officer.

Who knows the full import of the third proposition, which proposes to *authorize* a continuance of the sort of readjustments which have been adopted? The solid and only basis of readjustments of postmasters' salaries authorized by law is the basis of actual commissions. This is a proposition to authorize readjustments to be made, not upon the basis of the statute, but upon some other basis; and that other basis, whatever it may be, is not only undefined by any statute, or by any order, or by any regulation, but it must necessarily be in violation of the rule defined by the statute and of the published orders construing the statute; for otherwise there is no necessity for appealing to Congress for this authority. Suppose this authority be granted, and afterwards Congress ascertains that upon some notion adopted in the Department as

to the meaning of an opinion which was so framed, perhaps, as to mean one thing or another thing or nothing, a great fund shall have been wrongfully taken from the Treasury by this tortuous and seemingly sinister method. If the law be departed from, manifestly the adoption of another and different rule is likely to lead to injustice against the United States. The action proposed herein is manifestly of the most dangerous character. The only safe rule is the rule of the law; and the Department has authority already, and is enjoined to execute and comply with this one rule of the law.

The fourth proposition is to grant immunity to the Postmaster-General for violation of vested rights by the disallowance of postmasters' claims; and coupled with this is the singular proposition to grant immunity to the Postmaster-General for *allowing* applications. Who is to sue the Postmaster-General for making allowance to postmasters? Certainly not the beneficiaries. Who has authority to ask Congress to grant immunity to the Postmaster-General for making allowances to postmasters? Taking the whole bill together it seems to be collection of remarkable propositions. It is impossible that the Postmaster-General, in the faithful performance of his supreme ministerial duties, can have need of such relief as is proposed in this measure. We are bound to believe that he has been guilty of no unlawful act; that he has violated the vested rights of no postmaster; that he has disallowed no claim which he is required by law to allow; that he has allowed no claim in violation of the rights of the United States which he is not by law authorized to allow; and that he has adopted no rule of adjustment of salaries other than the one rule prescribed by law. And if he is not guilty of all these acts, which cannot be attributed to him, there is no ground for urging the passage of this measure.

Reference being had to the second section of chapter 116, laws of 1883 (22 Statutes, page 484), it appears that Congress has provided for the judicial determination of every troublesome question of law arising in any Department. This statute is for the purpose of relieving the head of any Department in any such case of all responsibility, and at the same time obtain a settlement of every such question binding on the country and entitled to the respect of the whole people. Congress is not permitted to assume that the Postmaster-General has had before him any difficult question of law to pass upon, upon this subject, which he has refused to submit under this provision of law to a satisfactory judicial decision. In view of this statute, who has a right to say that the Postmaster-General has *disallowed* and *allowed* claims in such doubtful manner that he requires for protection the passage of this bill,

or that his action for or against postmasters and for or against the United States has been by such a doubtful rule that protection must be afforded him by this measure on account of such doubtful acts?

In the opinion of the minority, there appears to be no ground whatever upon which the passage of this bill can be advocated. If the Postmaster-General has in any degree violated the rights of postmasters, such violation of rights cannot be cured by act of Congress. He is answerable for such violation of rights to the aggrieved parties. If he has violated the rights of the United States, he might perhaps be forgiven by statute. If there has been hitherto, or if there be now, any doubt about the construction of the Act of March 3, 1883, the Postmaster-General owes it to himself, to Congress and to the people to obtain from the Court of Claims a judicial decision of such doubtful questions.

If the theory of the construction of the Act of March 3, 1883, presented in the majority report be the true construction of the Act, then there is no ground whatever upon which to ask legislation. Consequently in urging the passage of this bill, the majority, in effect, admit that the theory presented is fallacious. That it is so, upon examination, will appear manifest. The Act of June 12, 1866, was passed before the time for the first biennial readjustment under the Act of July 1, 1864, arrived. The departure from the strict rule of that Act, requiring the prospective biennial adjustments to be made on the basis of commissions of the two years prior, by making such adjustments on one or two quarters, did not occur till after the passage of the Act of June 12, 1866, so that that Act could by no possibility have had any reference to deviation from the rule of prospective adjustments. The Act of 1866 had for its only possible purpose the rectification of the wrong resulting from prospective adjustment of salaries in cases of increase of receipts, after the prospective adjustment was made. The whole theory is based upon the manifestly untenable ground that, from the fact that the Act of June 12, 1866, was enacted as a *proviso* to section 2 of the Act of 1864, which made provision for the prospective adjustments, that thereby the Act of 1866 was limited to prospective adjustments. This is not only in manifest violation of the rule of construction of provisos, which requires that the excepted cases of the proviso be excepted from the limitations of the section to which the proviso is attached, but it also makes a complete nullity of the Act of 1866. The irresistible conclusion is, that Congress is asked to erect a statute upon the basis of a totally indefensible theory of the construction of an existing statute.

If it is desirable that there shall be a review of the prospective biennial adjustments made under the Act of July 1, 1864, in those cases where a salary was allowed less than the commissions of the prior two years, without regard to the amount of commissions for the subsequent two years, a bill for that purpose ought to be framed in clear language and presented to the House for its judgment.

If Congress has not the power by an *ex-post-facto* law to rob postmasters of vested rights to compensation earned, the effect of this measure would be, not to reduce the liability of the Government, but to extend it indefinitely, by conferring rights upon other postmasters who never complained of wrong, or had any ground of complaint.

HENRY H. BINGHAM,
J. C. BURROWS,
S. R. PETERS,
RICHARD GUENTHER,
J. B. WAKEFIELD."

For a time the executive of the Post Office Department struggled on with the payment of these bounties out of the Treasury of the United States. The character of this work became more and more appalling as it went on and a *cache* was prepared in the Department into which to avoid payment a great mass of these bounty accounts were put. In that *cache* these accounts have been securely kept for a term of years. Manifestly these bounty accounts can never be restored to life unless the contention of the Postmaster-General in prosecuting this appeal suceeds.

CONCERNING THE PROFIT AND LOSS RESULTING FROM THE SUBSTITUTION OF THE SALARY ACCOUNTS OF POSTMASTERS STATED ON THE RETURNS OF ONE BIENNIAL TERM FOR THE SALARY ACCOUNTS OF POSTMASTERS STATED ON THE RETURNS OF THE SUCCEEDING BIENNIAL TERM.

If the Postmaster-General has power to veto an act of Congress, by which it is ordered that all the acounts of postmasters in the biennial terms between July 1, 1864 and July 1, 1874, which show the payment of salaries to such postmasters, ten per cent., or more, less than salary by commissions, shall be stated and paid, the profits of such veto may fairly be estimated as follows:

Such accounts, if all were presented, would aggregate about $500,000 between July 1, 1864 and July 1, 1866, and about $300,000 between July 1, 1866 and July 1, 1868, and about $1,250,000 between July 1, 1868 and July 1, 1870, and about $750,000 between July 1, 1870 and July 1, 1872, and about $500,000 between July 1, 1872 and July 1, 1874.

Thus the estimated aggregate of these deficiency salary accounts of postmasters may be stated at $3,300,000, but of course it is to be considered that a large percentage of such accounts after so many years of delay will necessarily remain unpaid perpetually. In this connection, it may be noted that on March 3, 1875 (18 Stat. p. 413), Congress appropriated and caused to be paid $300,000 to those postmasters who had suffered a loss of fifty per cent. or more of their commission salary for the one year between July 1, 1873 and July 1, 1874.

There is reported in the official register of 1865 the total pay of every postmaster and the total receipts of his office for the one year, between July 1, 1864 and July 1, 1865, and by an examination of these reports and the deficiencies in the pay of postmasters for that one year it may be fairly estimated that the debt due postmasters between July 1, 1864 and July 1, 1866, aggregates about $500,000, and the payment of every dollar of this entire debt has been nullified to the extent of the power of the Postmaster-General.

The official register of 1867 contains a like report of all postmasters for the year ending June 30, 1867, and by comparing the increase of receipts of postmasters for this one year with the receipts at the same offices for the year ending June 30, 1865, it sufficienly appears that the increase of commissions at such offices between July 1, 1866 and July 1, 1868, over the commissions at the same offices between July 1, 1864 and July 1, 1866, which by the substitution method have been denied payment by the Postmaster-General do not much exceed $300,000. A comparison has been made of a certain share of the offices listed on the official register to warrant this estimate.

The official register of 1869 shows the total receipts of postmasters in the one year ending June 30, 1869, and by comparison of a certain portion of these post offices the number of cases showing increase of receipts in that year compared with the receipts at the same offices for the year ending June 30, 1867, has been estimated and the amount of such increases has also been estimated. From these estimates it may be stated that the total of commissions of postmasters between July 1, 1868 and July 1, 1870, in excess of their paid salaries which has been denied payment by the Postmaster-General by substituting the account stated on the returns of the same offices between July 1, 1866 and July 1, 1868, for the account stated on the returns between July 1, 1868 and July 1, 1870, may be fairly estimated at $1,250,000.

In like manner by comparing the total receipts at post offices reported for the year ending June 30, 1867, in those cases in which there was a decrease in such total receipts when

compared with the total receipts reported at the same offices for the year ending June 30, 1865, it appears that the decreased commissions between July 1, 1866 and July 1, 1868, compared with the larger commissions at the same offices between July 1, 1864 and July 1, 1866, amounts to about $823,374. So that the Postmaster-General by substituting the larger commissions at these offices between 1864 and 1866, for the smaller commissions between July 1, 1866 and July 1, 1868, would distribute gratuities amounting to about this sum.

It cannot be doubted that by substituting the larger commissions at post offices between 1866 and 1868, for the smaller commissions at the same offices between 1868 and 1870, would amount at least to half the sum of the gratuities between 1866 and 1868. Neither can it be doubted that by substituting the larger commissions between 1868 and 1870, for the smaller commissions at the same offices, between 1870 and 1872, another $400,000 of gratuities would be distributed. Neither can it be doubted that by substituting the larger commissions at offices between 1870 and 1872, for the smaller commissions at the same offices between 1872 and 1874, another $400,000 of gratuities would be distributed.

Thus it appears that to complete the distribution of gratuities by the rule set on foot by the Postmaster-General, not less than $2,000,000 would be taken out of the Treasury and thrown away.

A perfect illustration of this method of squandering public money is afforded by the eight cases cited in this brief.

An examination of pages from No. 210 to No. 265 of House Executive document, No. 70, 49th Cong., first session, shows that the Postmaster-General, in the first Pennsylvania schedule of readjusted salaries of postmasters, under the statute of 1883, caused to be paid to ten hundred and fifty-nine postmasters in that State between July 1, 1866 and July 1, 1868, various sums of money in addition to the salaries originally paid them for the sole reason that the receipts returned by these postmasters in that term decreased when compared with the receipts at the same offices in the term between July 1, 1864 and July 1, 1866, and that in the term between July 1, 1868 and July 1, 1870, he caused additional payments to be made to 453 postmasters because the receipts returned by them had decreased when compared with the receipts at the same offices between July 1, 1866 and July 1, 1868, in order to make the total salary of these 453 postmasters equal to the total commissions of the postmaster at the same office in the term prior, and it also shows that he caused to be paid additional salaries to 506 postmasters in that State,

between July 1, 1870 and July 1, 1872, because their receipts fell off and were less than the receipts at the same offices in the term between July 1, 1868 and July 1, 1870, such payments having been made in order to make the total salary at each of these offices between July 1, 1870 and July 1, 1872, equal to the commissions at the same offices between July 1, 1868 and July 1, 1870, and it also shows that he caused additional salaries to be paid to 489 postmasters in that State between July 1, 1872 and July 1, 1874, because their receipts so fell off as to make the total receipts at said offices less than the receipts at the same offices for the term between July 1, 1870 and July 1, 1872. This was done by the Postmaster-General, and at the same time he denied payment to every postmaster who had applied under the act of 1883, whose receipts so increased that the salary paid was ten per cent., or more, less than his salary by commissions would be.

And in order to find authority for this strange action the Postmaster-General after General Gresham went out of office, construed General Gresham's declaration of June 9, 1883, which is in this record on page 11, and in the following words: "If in fact, there are cases in which it appeared from the quarterly returns or from sworn reports of receipts and business, that postmasters of the third, fourth and fifth class at the biennial readjustment had their salaries fixed under the act of 1864, when by an adjustment under the act of 1854 ten per cent., or more, would have been added to their salaries, then under the act of 1883, such postmasters are entitled to whatever additional sum they would and should have received under the act of 1854," to mean that no postmaster of the classes stated shall have any additional pay, however great the deficiency of salary paid under the act of 1864, when compared with the salary he would have received under the act of 1854, may be, but that postmasters in whose salary under the act of 1864, when compared with what would have been received under the act of 1854 shows no deficiency whatever, should be paid bounties.

He also construes the declaration of Postmaster-General Gresham published throughout the country, on February 17, 1884, which is in this record at the bottom of page 11, "That in all cases in which it appears from the biennial adjustment of salaries of postmasters of the third, fourth and fifth classes that they received ten per cent., or more, less than they would have received in commissions under the act of 1854, they are now entitled under the act of March 3, 1883, to the difference between what was paid them and what they would receive as commissions under the act of 1854," to mean that no postmaster shall receive anything in addition to his

original pay, no matter how great the deficiency in his salary under the act of 1864, when compared with what he would receive under the act of 1854, may be, but that bounties shall be paid to those postmasters in many thousands of cases, who were paid under the act of 1864, as much as they would receive under the act of 1854.

The successor of General Greshem also cites as authority for the payment of bounties to one set of postmasters, and the denial of payment of deficiencies in the salaries of other postmasters, the opinion of Attorney-General Brewster, of February 13, 1884, which is printed on pages 9 to 14 of Senate Report, No. 2410, 50th Cong., 2d Session. In that opinion at the bottom of page 13 of that report the Attorney-General made the following statement: "Congress did not intend, in substituting the salary for the commission system, to give postmasters an exact equivalent of their earnings under the latter plan. It deliberately provided a scheme by which the salary should never exceed the commission standard, and would ordinarily be less by a difference extending to the limit of ten per cent." The system adopted by the successor of General Gresham, undertook to pay $2,000,000 in excess of the commissions to many thousands of postmasters, and it undertook to deny any payment to thousands of other postmasters whose salaries paid under the act of 1864, were from ten to ninety per cent. below the commission standard.

It is a public and well-known fact, reported in the official registers, between 1864 and 1874, that the Postmaster-General at the beginning of every biennial term readjusted the salary of every postmaster in the United States, but the Attorney-General in face of this well-known public fact used the following language:

"That act in June 1866, was about to be or was being put into operation for the first time as respected readjustments; and the Postmaster-General on the one hand and the postmasters on the other were concerned in its mandatory provisions, the former because he was required to readjust (according to the first section), every postmaster's salary in a schedule of (at that time), more than 29,000 offices—a task manifestly of great magnitude which had not theretofore been assigned to the Post Office Department, and which would of necessity add greatly to the labor and responsibility imposed upon it; the latter because they were for the first time graded in classes under novel regulations affecting their relations towards one another as well as to the Government.

"The amendment would evidently be a measure of relief to the Postmaster-General and his Department since it would save the labor of actual readjustment in many (probably a

large majority), of the cases, in which it would be determined by mere inspection that it was not required."

Thus, the Attorney-General held that all of the thousands of readjustments of postmasters' salaries biennially between 1864 and 1874, by which reductions of salaries were effected on decreased receipts, were made in violation of law. How many millions of dollars would be required to make this view of the law by the Attorney-General good by the return of the amount of the reduction of salaries unlawfully made?

A POSTMASTER'S SALARY IS A SUM CERTAIN FIXED BY LAW OR ACCORDING TO LAW.

No executive officer has power to control or obstruct the payment of any salary of any postmaster when the same has been determined according to law.

As has been shown, before 1864, the compensation of postmasters was not by annual salaries but by quarterly payments. Between 1833 and 1864, by this method postmasters were paid in the aggregate about $50,000,000, and as to the amount of pay in each case no officer had lawful power to deviate a cent from the law or to vary the amount of said compensation in the credit to the postmaster to the extent of one cent. In the $350,000,000 or more paid to postmasters since 1874, no officer had lawful power to deviate one cent in the credit given to any postmaster. The officers who supervised these credits were themselves supervised and controlled by the expressed provisions of law. Every unpaid salary of a postmaster is within the jurisdiction of the Court of Claims because the payment of that salary is required by a contract made by Congress and not by a contract made by the Postmaster-General.

When in January, 1878, in 95 U. S., page 97, this Court held as that decision is understood, in effect that the power and action of the Postmaster-General in fixing, under the statute of 1864, upon conjectural bases, the salaries of postmasters was supreme and not reviewable by the Court of Claims, what seemed to be an infatuation as to the power of the Postmaster-General seemed to prevail in the Post Office Department. The fact that there never was but one law so framed that no contract contained in it could be perfected in any way except by the executive act of the Postmaster-General in guessing at and fixing salaries of postmasters for terms in the future at the date they were fixed, seemed to be entirely forgotten and superseded by what seemed to be an assumption that the Postmaster-General had supreme authority to deny or allow to

postmasters salaries in amount as should please him. It is true that the Postmaster-General disregarding the regulations of 1866 and the statute of 1866, had and exercised this supreme power over the salaries of postmasters from 1864 to 1874, but he never had any like power before 1864, nor since 1874. The reason that enabled him to exercise that power between 1864 and 1874, was that the contract of 1864 was to pay postmasters guessed at salaries, or salaries estimated by the Postmaster-General, once in two years in advance of the term for which they were to be paid, and as much more frequently as he deemed necessary to maintain salaries of postmasters on the basis of commissions provided for by the statute of 1854. This being the contract of 1864, when the Postmaster-General by deliberate violation of postal regulations of 1866, and disregard of the statute of 1866, deprived postmasters, between 1864 and 1874, of about $4,000,000 of their earnings, the contract statute of 1864 afforded no remedy for this monstrous wrong inflicted upon the postmasters. Tested by the postal regulations of March 1, 1866, and by the statute of June 12, 1866, every dollar of the $4,000,000, said by the Solicitor General to be involved in the decision of this case, was taken from the postmasters by the maladministration of the regulations and law by the Postmaster-General. It seems by the decision of this Court, in 95 U. S., that the statute of 1864, was so defective that it permitted this maladministration by which the postmasters lost $4,000,000 of their earnings and afforded no remedy. This defect of the statute of 1864 was so marked that it was repealed in 1874, and a statute was enacted in its place so framed that the Postmaster-General had no power to guess away or take from any postmaster a dollar of his earnings. And solely because this alleged $4,000,000 earned by postmasters between 1864 and 1874, had been taken from them by the Postmaster-General, Congress, in 1883, ordered a conputation and statement of the losses thus sustained by the postmasters to be made in order that the same be paid to them. During the whole time the Postmaster-General was engaged in stating accounts he knew it to be impossible for Congress under such circumstances to enact a statute in 1883, authorizing him to so manipulate these accounts as to prevent payment of any part of his salary by commissions in any case where the salary originally paid was ten per cent., or more, less than the salary by commissions. He knew it to be impossible for Congress by statute in 1883, to authorize payments of gratuities to any postmaster who served between 1864 and 1874. Knowing this he publicly declared throughout the United States from June 9, 1883 to 1888, the statute of 1883 to be a contract to state and pay salary ac-

counts of postmasters on all the returns within a bienni
term on the basis of commissions provided by the act of 185
in all the cases where the salary paid was ten per cent. less th
the salary by commissions. If it be true as supposed by t
Solicitor-General that this case in the application of its d
cision to the salaries of postmasters all over the country i
volves an estimated aggregate sum of $4,000,000 it follow
that in the maladministration of the statute of 1883, and
contempt of the public orders of the Postmaster-Gener
cited, there has been withheld by force from postmaste
whose stated acounts show that they were paid salaries te
per centum less than salaries by commissions, an aggrega
sum estimated at $4,000,000.

The sole purpose of the statute of 1883, as shown by its ow
terms is to change by increase the salaries of certain pos
masters and to pay such increase of salaries. By this statu
this change by increase was not to be made by estimates f
future terms, but solely by statement of accounts on the r
turns for past terms of service. The conditions as to salari
of postmasters affected by this law between 1864 and 187
were the reverse of the conditions as to such salaries whi
existed when the statutes of 1864 and 1866 were enacted,
this, namely: The statutes of 1864 and 1866, were solely
fix salaries of postmasters for future terms without whi
there could be no salaries of postmasters at all. In 1883
such condition existed. The conditions in 1883 required t
change by increase of the salaries fixed and paid under t
statutes of 1864 and 1866 in certain cases. From 1864 to 18
there could be no adjustment of a postmaster's salary e
cept such as ended the term of the salary by a prior prospe
tive adjustment, by substituting for a succeeding futu
term, a new prospective adjustment. In 1883 t
rule of adjustments of salaries of postmasters, und
the statute of 1864 and 1866, was obsolete, su
adjustments having been ended by statute in 187
The rule of the statute of 1864 and 1866 could only exi
as to salaries of postmasters requiring to be fixed for futu
terms, and by the terms of those statutes any salary fixed f
a future term was continually under the supervision and co
trol of the Postmaster-General to be ended by him at any tim
by the substitution of a different salary. By the rule of t
statute of 1864, there was continual uncertainty from the b
ginning of a biennial term when the adjustment was made
the end of that term as to what the total pay of the postma
ter would be in that term, and this uncertainty could only en
when the entire action of the Postmaster-General, throug
out the whole term, was complete. Under such a state

the law there could be no effective remedial legislation until the control of the Postmaster-General over such salaries passed away. The control of the Postmaster-General over all salaries paid to postmasters between 1864 and 1874 passed away in 1874. There was no power anywhere after July 1, 1874, to change the salary of any postmaster by increase who had served between 1864 and 1874, outside of the law-making power. The power asserted by Congress in the statute of 1883 is the power to change salaries by increase of certain postmasters in spite of the power asserted by the Postmaster-General, between 1864 and 1874, to prevent such changes. In the very nature of the case the statute of 1883 made the Postmaster-General a mere clerk to effect the changes ordered by Congress. It would be absurd to attempt to create in the Postmaster-General by authority of the act of 1883, any such power as he had and exercised over the salaries of postmasters under the statute of 1864. It is plain that the statute of 1883 is an order of Congress to change salaries of postmasters between 1864 and 1874, by increase thereof, in those cases in which the Postmaster-General under the statute of 1864 accorded to the postmasters salaries which were ten per cent., or more, less than they would be by commissions. Can there be a more glaring attempt to nullify a law of Congress than to invent a method of stating salary accounts of postmasters which would defeat the very thing ordered in the body of that statute, namely; to change salaries by increase in those cases where the salaries were awarded by the Postmaster-General, which are ten per cent., or more, less than salaries by commissions. Let it be considered for a moment that the conditions which required the enactment of the staute of 1883 were created by the Postmaster-General through the use of his executive power by which he had reduced the pay of thousands of postmasters far below their just earnings, and below what was by law intended to be paid them. For this reason alone Congress by the statute of 1883, ordered an increase of all such salaries when applied for. There was absolutely no measure in existence of the increased salaries ordered except the statute of 1854. The returns of all such postmasters were registered in the office of the Postmaster-General with the amount of every salary paid thereon. Having respect for the statute of 1883, it was impossible for the Postmaster-General to exercise any power except to state the credit accounts on the postmaster's registered returns and to state against such credit accounts the sum of the salary paid thereon for the term and to report such acounts when thus stated. In most cases the salaries of United States officers are certain as to amount because fixed by law. In other cases they are certain because

fixed acording to law upon records of official duties performed by them. The salary of no postmaster who served between 1864 and 1874 could be changed at all except by a stated credit account larger by ten per cent., or more than the salary awarded by the Postmaster-General. And this credit account in every case had to be stated on the registered returns for a full biennial term. And no such credit accounts could be stated at all except by the rule of compensation of postmasters embodied in the statute of 1854. In every one of the thousands of such accounts stated by the Postmaster-General the increased salary of the postmaster as to amount is an absolute certainty.

In Stockwell, et al *vs.* the U. S. (80 U. S. 531), this Court said:

"It cannot be that whether an action of debt is maintainable or not, depends upon the question who is the plaintiff? Debt lies whenever a sum certain is due to the plaintiff or a sum which can readily be reduced to a certaintly—a sum requiring no future valuation to settle the amount. It is immaterial in what manner the obligation was incurred or by what it is evidenced if the sum owing is capable of being definitely ascertained."

Having some bearing on this question this Court (in 98 U. S. 179, 186, McKnight et al *vs.* U. S.), says: "With a few exceptions growing out of public policy, the rules of law which apply to the Government and to individuals are the same. There is not one law for the former and another for the latter."

It can hardly be as to the great army of officers who have served the United States Government that as to any considerable number there can be any uncertainty as to the compensation due them for their service. It certainly must be a very exceptional case in which uncertainty as to the pay of an officer can be so great that he cannot in the case of non-payment enforce payment of the same by suit.

It is, and always has been, the policy of the law to make the pay of all officers of the United States certain, or such that the amounts can readily be reduced to a certainty.

In 144 U. S., in the case of the United States *vs.* Wilson, pp. 24 to 28, upon the question of the right of a postmaster to sue for his unpaid salary where an executive officer refused payment, after reciting the method of the law by which the compensation of postmasters was determined, this Court used the following language: "All this was in exact conformity to the letter of the statute of 1883. The gross receipts of the office for the four quarters ending July, 1886, were more than $4,200, and less than $5,000; consequently *the statute fixed* the salary of a postmaster at $1,600 per year. By section 3 of the

the change made in the salaries could not take effect until first day of the quarter next following the order. The t quarter commenced October 1, 1886. Thus it was that order of the First Assistant Postmaster-General desig-ed October 1, 1886, as the day when it should go into opera-. The statute was then fulfilled. Its terms had been car- out. The office had been properly changed to one of the d class, and the salaries of postmasters had been changed neet the mandate of the law. Whoever was then perform-the duties of postmaster at that office became entitled to salaries thus fixed. It matters not that the President did commission a third class postmaster at that office until e months thereafter. The President had nothing to do h the salary attached to the office. That had been fixed olutely by the Postmaster-General, under the express ctions of a law of Congress. Neither could the salary of postmaster be affected by any subsequent order of the h Auditor, as was attempted to be done in this case; for already stated, his duty and authority in the premises sed when he made his report of the business transactions he office to the Postmaster-General. The whole theory of act of 1883 is that every postmaster shall receive a salary endent upon and regulated by the amount of business e at his office. The intent of the statute in this respect ap-rs so plain upon a careful reading of it that it is difficult elucidate it by argument or illustration. The mere state-nt of its terms is the best argument in favor of the conclu-n we have reached."

here is another postmaster compensation case in 149 U. S. 278 to 387.

n this case the Postmaster-General had decreed the pay n postmaster less than the pay prescribed by the statute n the grounds that the postmaster had committed fraud. s action was had by the Postmaster-General under the of June 17, 1878, giving the Postmaster-General discre-n to deprive a postmaster of his commissions prescribed by and award him such compensation as he might deem per. In that case this Court held that such deprivation s a mere suspension of the pay prescribed by law, and that ess the fact of fraud and the amount of loss to the Gov-ment by the fraud alleged was established, the postmas-had a right to the exact amount of compensation pre-bed by law. In the decision of this case a quotation was de from the decision of the Court by Mr. Justice Fields in case of the United States *vs.* Barlow, 132 U. S., pp. 271, , as follows: "We admit that where matters appertaining the postal service are left to the discretion and judgment

of the Postmaster-General, the exercise of that judgment and discretion cannot in general be interfered with, and the results following defeated. But their rule proposes that information upon the matters upon which the judgment and discretion are invoked is presented to the officer for consideration, or knowledge respecting them is possessed by him. He is not at liberty, any more than a private agent, to act upon mere guesses and surmises, without informaton or knowledge on the subject." The conclusion of this Court in that case was stated by Judge Jackson as follows:

"Our conclusion is that the order of the Postmaster-General and the certified acounts produced by the Government in the present case were only prima facie evidence of the balance claimed against the defendants in error, and that there was no error in the Court below in so holding; and the judgment is accordingly affirmed."

In the foregoing case the law as to the compensation of the postmaster prevailed over the power of the Postmaster-General, which power he had also exercised under another statute.

Plainly, the statute of 1883 permits no uncertainty whatever as to the pay of postmasters within that statute for as stated it was solely because of the uncertainty as to the pay of postmasters between 1864 and 1874, created by the Postmaster-General in the postal regulations and by his administration of the regulations and the law that compelled Congress to remove that uncertainty by the enactment of the statute of 1883. The record shows to the Court that the Postmaster-General knew that he was required to reduce to a certainty from the registered returns of the claimant the amount of the claimant's compensation by commissions in each of his four biennial terms of service. When the Postmaster-General had done this, how is it possible for him to create any uncertainty as to the compensation the statute ordered to be paid to the claimant? It is very plain from the history of these cases of the action of the Postmaster-General that he was conscious of the fact that there was absolutely no uncertainty whatever upon this point. If he was in ignorance upon this point why did he conceal from the Congress of the United States and the Court of Claims for a term of years the four certain acounts which he had stated from the registered returns of the claimant in exact conformity to the requirement of the law as he had published that requirement throughout the United States? In any view of the case there is absolutely no uncertainty whatever about the compensation ordered by statute to be paid to the claimant, for no defense whatever is offered to the Court in prosecuting this appeal

on the score of any uncertainty as to the correctness of these accounts. Curiously enough, the defense here is that the Postmaster-General was directed by law to ignore the salary account stated in the first term, and was at the same time authorized to ignore the salary account stated in the second term and to substitute by transposition of the salary account stated in the first term for the salary account stated in the second term and the salary account stated in the second term for the salary account stated in the third term, and the salary account stated in the third term for the salary account stated in the fourth term. If this transposition of certain stated salary accounts of postmasters be law and if the Postmaster-General believes it to be law, why has he refused to report for payment some thousands of these transposed salary accounts?

He has been requested in numerous letters to report for payment some thousands of these transposed accounts. The following is a copy of the last letter addressed to him upon this subject:

"Washington, D. C., Aug. 6, 1898.

"Hon. Chas. Emory Smith, Postmaster-General.

Sir: I hereby submit to you personally 62 cases of restated salary accounts of postmasters in the State of Wisconsin, under the act of March 3, 1883, by the rule declared by the Postmaster-General publicly and continuously in recent years to be the law. This rule commands each salary of each postmaster to be restated not upon the commissions of the term for which the restatement is made, but upon the basis of the commissions on the next preceding term. The cases now submitted specify the name of the post office, the name of the postmaster and the term in which a part of the salary due is unpaid by this rule, and the amount of the salary unpaid is approximately stated in each case. The date of application for readjustment of salary, prior to January 1, 1887, is also stated. In each case the claimant has heretofore been deprived of the debt due by a violation of the law and the rule as laid down by the Postmaster-General himself. The cases are specifically brought to your knowledge personally in order that this claim and unprecedented violation of the law may be ended by a report of each case for payment in execution of the Postmaster-General's own rule.

"Respectfully,

(Signed) "HARVEY SPALDING."

All these letters unanswered sleep with these unpaid accounts in a secure place in the Department.

There are two expressions used by this Court in the Wilson case which seem to apply to this case and to every other case in which the pay of a postmaster is involved, namely: "The

statute fixed the salary," and the salary "had been fixed absolutely by the Postmaster-General under the expressed directions of a law of Congress." So in this case the claimant's salary was "fixed absolutely by the Postmaster-General under the expressed directions of a law of Congress," at $531.90 in the first term; at $1,015 in the second term; at $1,179.67 in the third term, and at $1,311.16 in the fourth term.

If this was not so then the Postmaster-General in stating these accounts violated a law of Congress, for he had no authority whatever to state these accounts as he did unless it was under the express directions of that law of Congress. Having stated these salaries under the expressed directions of a law of Congress, the Postmaster-General had no power to substitute the salary of the first term for the salary of the second term and the salary of the second term for the salary of the third term, and the salary of the third term for the salary of the fourth term "unless under the express directions of a law of Congress." If he had such expressed directions under a law of Congress, it is conclusive of the law as to thousands of like cases which have been "cached" in the Department and not paid. If he had such expressed directions of a law of Congress there can be no doubt that that law will be discovered and pointed out to this Court in the proceedings before this Court, and that thereby these "cached" salary accounts of postmasters will be resurrected and paid, for it is undeniable that if this transposition of salary accounts of postmasters be law the results of such transpositions are absolute certainties as to amounts due. But if the law of Congress, in which the expressed directions to transpose these salary accounts is alleged to be, shall not be pointed out the question involved reverts to the statute which expressly directed the salary accounts of the claimant to be stated as they appear in the record.

On pages 15, 16 and 17 of the record it is shown that in response to a call of the Senate of the United States, the Postmaster-General early in 1890, transmitted to the Senate schedules of the readjusted unpaid salaries of postmasters in four States. In fact, the claimant's readjusted salaries were stated on one of these schedules. But before the money could be provided by Congress to pay these readjusted salaries, and on September 30, 1890, these schedules were withdrawn from the Senate by the Postmaster-General.

If the Postmaster-General believed that the readjusted salaries of 16,523 postmasters whose claims are in the Court of Claims, stated by the one rule as applied to this case to be not debts due and payable of certain ascertained fixed sums as ordered by law, why has he during many years kept

"cached" in the Department these thousands of salary accounts of postmasters?

If he believes that by law these stated salary accounts are neuturalized and are, therefore, no evidence of debts due and payable to the postmasters because the law commands the transposition of such credit accounts from one term to the succeeding term, and that the resulting debts due and payable are only such as are shown by the excess of the resulting credit by transposition over the salary paid in the term to which the transferred credit is carried, why does he keep under cover thousands of these unpaid credits? If he believes that accounts are so stated because the law commands it to be done is it not obvious that he seeks to nullify the law containing that command?

If the law be as it is assumed to be by the prosecution of this appeal, is it not an attempted fraud on the law to suppress reports in some thousands of accounts in which there has been a transposition of credits from one term to another?

If the law be as it was reported to be by the Postmaster-General on pages 9 to 12 of this record, is it not an attempted fraud on the law to keep under cover all the thousands of accounts represented by the claimant's account at the bottom of page 16 of this record?

The following is an extract from Senate Report, No. 1611, unanimously reported by the Senate Committee on Claims on June 2, 1900:

"The Committee believes that any action to prevent the payment of these deficiencies where applications were made to the Postmaster-General within the time limited by law, by refusing to state the accounts showing the existence and amount of the deficiencies or by refusing to report the accounts after statement which showed the existence and amount of the deficiency, to be in fraud of the statute of 1883."

BY AUTHORITY OF TWO DECISIONS OF THIS COURT IT MAY BE AFFIRMED AS IS BELIEVED THAT THE STATUTE OF 1883 IN EVERY READJUSTMENT OF A POSTMASTER'S SALARY MADE BY THE POSTMASTER-GENERAL DETERMINED WITH ABSOLUTE CERTAINTY THE POSTMASTER'S SALARY.

In the case of The United States, appellant, *vs.* Wm. J. Verdier, admr. of James R. Verdier, decd. (164 U. S. 213), this Court used the following language:

"It was not till 1883 that the Postmaster-General was authorized to readjust the compensation of postmasters and to make such readjustment retrospective.

"By the act of 1883 no readjustment could be made except upon the application of the postmaster, and when the appli-

cation was made in this case the salary for the first time was readjusted. Until this time the debt was not liquidated—in fact, it would be more accurate to say that it did not exist. * * *

"Upon the other hand, the Government did not become indebted to Verdier until his claim was liquidated."

As is known, this Court in the case of the United States, appt. *vs.* J. K. McLean, 95 U. S. 750 to 753, decided that the Court of Claims could not perform the duty of readjusting the salary under the acts of 1864 and 1866, and after the act of 1883 was passed this Court held in the case of the U. S. ex rel J. K. McLean, *vs.* Wm. F. Vilas, Postmaster-General in 124 U. S. 86 to 97, as follows:

"Upon a very careful examination of these statutes we are forced to the conclusion that the legislature in these enactments did not contemplate any readjustment of the salaries of any of these officers oftener than once in two years, as a legal duty or obligation upon the part of the Postmaster-General." "Acting upon this suggestion, and under the act of Congress of March 3, 1883, which authorized and directed the Postmaster-General, in proper cases, to make readjustments of salaries which should act retrospectively, Mr. McLean made," etc. In this connection it ought to be noted, perhaps, that in the Verdier case this Court said that it was not till 1883 that the Postmaster-General was authorized to readjust the compensation of postmasters and to make, etc., and that the language quoted from the case in 124 U. S. speaks of a readjustment of the salaries of *officers*. These expressions of this Court clearly make the proper distinction with reference to the meaning of readjustments of the salaries of *postmasters* and the readjustments of salaries *at post offices* provided for by the act of 1864. This is understood to mean that this Court holds in the Verdier case that a readjustment of the salary of a postmaster—that is, a change of a paid salary of a postmaster, was not authorized till 1883.

As the statute of 1864 made obligatory upon the Postmaster-General prospective readjustments of salaries once in two years as to all postmasters the decision of this Court in 124 U. S. quoted, limited and fixed absolutely the statute of 1883 to change of salaries of postmasters by retrospective readjustment of salaries for biennial terms of service.

It is in this view of the case no doubt that this Court in the Verdier case in 164 U. S. 213, used the following language:

"Nor is it strictly true to say that the Government was indebted to Verdier at the date of this judgment against him. He had performed service for which an indebtedness was subsequently *voluntarily created* by the Government, but until the

readjustment was made the law imposed no obligation upon the Government to pay him an increase salary. Verdier could not have availed himself of it as a counter claim to his own debt to the Government, and in fact, it never became a debt until the claim was liquidated under the act of 1883."

The following is also quoted from the Verdier decision:

"Verdier's claim for interest in this case is based upon the assumption that the Postmaster-General neglected his duty in failing to readjust his salary. We have shown that if he had performed his statutory duty his action would have been prospective only and would have covered but comparatively a short period of Verdier's service."

From this it seems clear that this Court has decided that the statute of 1883 created a debt due and payable through a retrospective biennial readjustment of salaries of postmasters in those cases where the prospective adjustment deprived postmasters of ten per cent., or more of the pay they would have received under the act of 1854, and that this was not authorized by any prior statute.

As a biennial prospective adjustment of salaries of postmasters was provided for by the act of 1864, it is established by the decisions of this Court that the readjustment provided for by the act of 1883, was the reverse as to its method and character of the biennial adjustment provided for by the act of 1864, because this Court holds that where the readjustment provided for by the statute of 1864 created no debt the readjustment provided for by the statute of 1883, in respect to every case included within its terms, created a debt for the first time.

Manifestly by authority of this Court every readjustment of a postmaster's salary under the act of 1883 was a retrospective readjustment, and that the statute of 1883 through each retrospective readjustment ordered by that act created a certain specific debt due and payable. There could be no retrospective readjustment of the salary of any postmaster whose claim was within the act of 1883 which did not liquidate and make absolutely certain and remove every uncertainty that existed before that readjustment with reference to his claim against the Government.

The decisions of this Court referred to describe and define as is understood the debt created by the statute of 1883 as the difference between two salaries of a postmaster, the one created by the act of 1864 by a prospective adjustment, and the other created by the act of 1883, by retrospective readjustment. And the debt thus liquidated exists only in those cases where the salary created by a prospective adjustment is ten per cent., or more, less than the salaries created by a retrospective read-

justment. Thus, this question has been decided by this Court and by Postmaster-General Gresham whose decisions are in this record in the same way and with the same limitation for General Gresham held that no readjustment of salary of a postmaster was authorized by the act of 1883 to be made from quarter to quarter or for a less period than a biennial term, and this Court so decided in 124 U. S.

In the proviso of Chapter 119 of the laws of 1883, Congress made the following order:

"That every readjustment of salary under this act shall be upon a written application signed by the postmaster or late postmaster or legal representative entitled to said readjustment; and that each payment made shall be by warrant or check on the Treasurer, or some assistant Treasurer, of the United States, etc."

In this legislation Congress ordered the creation of salaries by increase above the salaries originally created and paid and ordered payment of the same and prescribed the method of payment.

Congress never used such language except as to debts made certain by law as to amounts. Under this legislation for the Postmaster-General to attempt to render uncertain and to convert debts certain into claims of uncertain amount is to attempt a deliberate violation of law and to pervert his lawful power to faithfully execute the laws to defeat and prevent the execution of the laws.

"Salary" as used in this statute means, of course, a recompense for official duties performed by the postmasters. The "salary" described in this statute is no uncertain sum of money. Its payment could not be ordered by Congress in this statute if Congress had not decreed certainty as to the amount of such salaries at the same time that *payment* was ordered.

Payment is "the fulfillment of a promise, or the performance of an agreement."

Congress enacted "that each payment made shall be by warrant or check on the Treasury, etc."

Can there be a greater or more conspicuous act of executive treachery than to attempt to defeat payment promised and agreed by Congress to be made of salaries to certain postmasters for official duties performed?

It seems plain that the payments of debts to postmasters ordered by the statute of 1883 to be paid, as to which applications were made to the Postmaster-General prior to Jan. 1, 1887, can only be prevented by one or the other of two methods: First, by a denial by the Postmaster-General that the readjustments ordered by Congress in order to effect pay-

ment, have been made. Second, by a suppression of reports of the readjusted salaries. Either of these defenses, if made, would in effect be that the Government of the United States relies upon a fraud upon the law by their agent, the Postmaster-General, to defeat the entry of judgments for the amount of debts due.

In the case before the Court the Postmaster-General after seventeen years of continuous persuasion consented that the four readjusted salaries of the claimant in the four biennial terms between July 1, 1866 and June 30, 1874, ordered by Congress to be paid by warrants or checks on the Treasurer of the United States should be passed upon by the Court of Claims.

These four readjusted salaries of the claimant aggregate $4,037.73, which sum is reduced by prior payments to $1,264.83, and for this sum the Court of Claims entered a judgment against the United States.

It is submitted that the entry of this judgment by the Court of Claims is plainly without error and in accordance with the plain mandate of Congress, and ought, therefore, to be affirmed by this Court.

HARVEY SPALDING,
Attorney for the Claimant.

Washington, D. C., April 26, 1901.

No. 225.

Brf. of Spalding for Appellee

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JAMES H. McKENNEY,
Clerk

Filed Oct. 28, 1901.

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1901.

THE UNITED STATES, *Appellant,*
vs.
WILLIAM T. EWING, *Appellee.*
} No. 225.

Appeal from the Court of Claims.

REPLY TO THE BRIEF FOR THE UNITED STATES FOR THE APPELLEE.

HARVEY SPALDING,
Attorney for Appellee.

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1901.

NO. 225.

THE UNITED STATES, APPELLANT,

vs.

WILLIAM T. EWING.

APPEAL FROM THE COURT OF CLAIMS.

REPLY TO THE BRIEF FOR THE UNITED STATES FOR THE APPELLEE.

THE FACTS.

The brief for the United States presents no controversy as to the established facts.

Upon the application of William T. Ewing, who had been postmaster at Gadsden, Ala., during the four biennial terms between July 1, 1866, and July 1, 1874, to the Postmaster-General for readjustment and payment of an increased salary in each of said terms to which he believed himself entitled by the Statute of March 3, 1883 (c. 119, 22 Stat., 487), the Postmaster-General ascertained and stated his commission salary, and paid salary and unpaid commission salary in each of said terms as follows, to wit:

For the first biennial term (July 1, 1866, to July 1, 1868) commission salary, $531.90; paid salary, $146; unpaid commission salary, $385.90; for the second biennial term (July 1, 1868, to July 1, 1870,) commission salary $1,015; paid salary, $440; unpaid commission salary, $575; for the third biennial term (July 1, 1870, to July 1, 1872,) commission salary, $1,179.60; paid salary, $920; unpaid commission salary, $259.67; for the fourth biennial term (July 1, 1872, to July 1, 1874,) commission salary, $1,311.16; paid salary, $1,080; unpaid commission salary, $231.16; total unpaid commission salary for the four terms, $1,451.73.

Thereupon the Postmaster-General substituted Ewing's commission salary of $531.90 in the first term for his paid salary of $440 in the second term, and in this way paid him in the second term $91.90; and he substituted his commission salary of $1,015 in the second term for his paid salary of $920 in the third term, and thus paid him in the third term $95; and, as alleged, he undertook to substitute his commission salary of $1,179.67 in the third term for his paid salary of $1,080 in his fourth term, but, as claimed, could not lawfully do so because the paid salary of $1,080 in the fourth term was but $99.67 less than the commission salary of $1,179.67 in the third term.

It is publicly known that there was a contention of a multitude of postmasters for additional compensation, which contention was created by the reduction of their compensation 10 per cent. or more below the compensation prescribed by the statute on June 22, 1854 (10 Stat., c. 61, p. 298), by the Postmaster-General on his own responsibility in the administration of the statute of July 1, 1864 (13 Stat., c. 197, p. 335). This contention originated before the end of the first biennial term after the statute of July 1, 1864, was enacted and in response to the complaints of the postmasters and as a remedy therefor Congress enacted the statute of June 12, 1866 (14 Stat., c. 114, p. 60, sec. 8). The Postmaster-General exercised authority under the statute of June 12, 1866, to pay the deficiencies in compensation of postmasters for past terms of service, but he treated the statute as not mandatory upon him to do so. In illustration of the exercise by the Postmaster-General of authority to pay deficiencies under the Act of 1866 to postmasters for past terms of service, the following cases are cited. He paid to J. H. Harper, postmaster at Jackson, Tenn., for a deficiency in his compensation in the term ended June 30, 1868, $1,650. He paid a deficiency of $356.67 in the compensation of Charles T. Wheaton, postmaster at Pleasonton, Kans., in the term ended June 30, 1870. He paid to J. Frank McDowell, postmaster at Columbus, Kans., prior to June 30, 1872, a deficiency in his compensation prior to that date of $464.49, and he paid to O. S. McDowell, postmaster at the same place, a deficiency in his compensation of $156.75. To Frank Danford, postmaster at Girard, Kans., he paid a deficiency of $405 in his compensation which occurred prior to July 1, 1872, and he paid to George Ryan, Frank Danford's successor in office, a deficiency in his compensation of about $175. He paid to A. W. Toucey, postmaster at Winfield, Kans., a deficiency of $620 which occurred in his compensation prior to July 1, 1872. He paid a deficiency in the compensation of J. C. Warner, who was postmaster at Bunker Hill, Kans., of $244 which occurred prior to July 1, 1874. He paid a deficiency which occurred in the compensation of Albert Ames, postmaster at Kendall, Mich., of $158 in the term prior to July 1, 1872. In 1875 he paid deficiencies in compensation to a great many postmasters which occurred prior to July 1, 1874, aggregating $300,000.

It is a strange fact, however, that the Postmaster-General, after the enactment of the statute of 1866, continued to decrease by his administration of the statute of July 1, 1864, the compensation of postmasters to such an extent that a great mass of postmasters were aroused and asserted claims for the restoration of the compensation taken from them by the Postmaster-General. Congress repealed the statute of 1864 under which the Postmaster-General on his own responsibility decreased the compensation of postmasters by wholesale. And as a final remedy for the complaints of wrongs suffered by the postmasters, Congress enacted the statute of March 3, 1883 (22 Stat., c. 119, 487).

Postmaster-General Gresham took up the subject of carrying into effect the statute of March 3, 1883, enacted by Congress to settle and put an end to a controversy which began before July 1, 1866, and continued till this statute was enacted. He gave full and faithful consideration to the subject and to an opinion of the Attorney-General, and on February 17, 1884, he published throughout the United States the statute of 1883 to be a contract for the payment of all deficiencies of 10 per cent. or more in the compensation of postmasters of the three classes named in the statute, by restating their salaries on the basis of the Act of 1854 upon the eight quarterly returns of each biennial term.

This final authorative order of the Postmaster-General is printed in the record at the bottom of page 11 and is in the following words:

"WASHINGTON, D. C., *Feb. 17, 1884.*

"The Attorney General has rendered an opinion in regard to the construction of the Act of March 3, 1883, relative to the readjustment of postmasters' salaries. He holds that in all cases in which it appears from the biennial adjustment of salaries of postmasters of the third, fourth and fifth classes that they receive ten per cent. or more less than they would have received in commissions under the Act of 1854, they are now entitled under the Act of March 3, 1883, to the difference between what was paid them and what they would receive as commissions under the Act of 1854. He also holds that it is not the intention of Congress, by the Acts of 1864 and 1866, to dispense with the biennial adjustments. It follows that a claimant, under the Act of March 3, 1883, must show that the acts subsequent to 1854 deprived him of 10 per cent. or more of what he should have received if those statutes had not been enacted, and he had been compensated on the basis of the Act of 1854. The opinion of the Attorney-General is in harmony with the construction of those statutes by the Department."

The contention of the postmasters, through many years, to recover the compensation of 10 per cent. or more which they lost by the administration of the statute of July 1, 1864, by the Postmaster-General, constituted the sole reason for the enactment of the statute of March 3, 1883, and this was perfectly known to the Postmaster-

General when, on February 17, 1884, he published throughout the United States the requirement of that law.

THE CONTENTION OF THE POSTMASTER-GENERAL AGAINST THE STATUTE OF 1883 AFTER GENERAL GRESHAM LEFT OFFICE.

The resistance by the Postmaster-General of the statute of 1883, after General Gresham left office, was by substituting under cover the salary of one term for the salary of the next term. This substitution went under the name of a prospective adjustment. Manifestly there never existed any law providing for a prospective adjustment of a salary at a post office except the authority contained in the Act of July 1, 1864. The requirement of that statute prohibited any readjustment of a postmaster's paid salary, and there can be no readjustment or change by increase of a paid salary of a postmaster except by authority of a statute which makes provisions for payment of such increased salaries. Any such law must of necessity be supplementary to the statute of July 1, 1864, because that law authorized only assignments of salaries at post offices at the beginning of every biennial term and a reassignment as often as was necessary during the term ensuing in order that the postmaster serving in the term should neither be underpaid nor overpaid in any material sense when tested by the statute of 1854, which forms the basis of the salary act of July 1, 1864. Consequently, the substitution of a salary in a past term for the salary in another past term is not only without the authority of any statute, but it is contrary to reason and to justice and it involves a double fraud by the underpayment of the postmaster in the term in which the smaller salary of the prior term is substituted for the postmaster's larger salary in the succeeding term, and it operates as a fraud upon the United States by overpayments in that great number of cases in which by decrease of receipts the salaries are smaller in succeeding terms than are the salaries in the prior terms.

No such thing as the substitution of a salary in one term in the past for the salary of another term in the past was ever known or suggested until after February 17, 1884. It was set on foot in the seclusion of the Department about the time that Mr. Hatton succeeded Postmaster-General Gresham, who left office on the 14th of October, 1884. The method by which it was done is interesting. The order of General Gresham of February 17, 1884, defining and elucidating the statute of March 3, 1883, was kept in seclusion. After it had been set on foot authority for it was officially attributed to General Gresham in defiance of his plain declaration of the requirement of the law of the date mentioned.

His authority for the creation of these ficticious salaries was assumed in the report of the Postmaster-General of November 21, 1885, to exist. The following is an extract from that report: "After the passage of the Readjustment Act of 1883 Postmaster-General Gresham, himself a jurist of high rank, decided, substan-

tially, that its correct interpretation requires of the Department simply to review the salaries in question and proceed *biennially* to readjust them prospectively, in those cases in which it failed of being done, in the same manner and upon the same rules by which the adjustment should have been made from time to time under authority of the former laws."

This report ignores the fact that a biennial readjustment of salaries, so called—that is, a reassignment of salaries biennially at the beginning of biennnial terms, was originally made under the statute of July 1, 1864, at every post office in the United States. No case was omitted. It was not possible after 1883 to make any assignment at any post office in the United States of any salary "In the same manner and upon the same rules by which the adjustment should have been made from time to time under authority of the former laws." Every assignment of a salary under the Act of July 1, 1864, at a post office at the beginning of a biennial term was by that law subjected to the control of the Postmaster-General, to be changed by him during the term as frequently as he saw fit to do so. No power can restore the conditions surrounding every assignment of salary at post offices under the Act of July 1, 1864. Such conditions are absolutely lost in the past.

The war upon the statute of 1883, inaugurated about the time General Gresham left office, was carried on by officially reporting that it was by the authority of General Gresham. But at the same time Congress was made to believe that the readjustments, so called, by substitution were in fact readjustments of salaries made in compliance with the law as it was publicly declared to be by General Gresham. As is well known, the substitution of one postmaster's salary for another postmaster's salary in another term sets at absolute defiance the question as to whether the paid salary of the postmaster in either term is 10 per cent. or more less than his salary by commissions. By the annual report of the Postmaster-General Congress was made to believe that salaries were allowed in no case unless the paid salaries were found to be 10 per cent. less than the commissions.

The following is an extract from the annual report of the Postmaster-General of November 26, 1887, from page 364 of that report:

"Review of salaries of postmasters of the third, fourth, and fifth classes, under the act of March 3, 1883." * * *

"Fifty-four thousand four hundred and fifty-three claims have been reviewed, and 21,573 have been allowed; 32,880 were found to be *below the 10 per cent. requirement of the law*, or for periods outside the date defined by the act." * * *

The following are extracts from the annual report of the Postmaster-General of November 28, 1888, from page 82 of that report:

"Review of salaries of postmasters of the third, fourth and fifth classes under the Act of Mar. 3, 1883." * * *

"The number of claims reviewed was 68,725. Of this number 26,238 claims have been allowed, and 42,487 claims were found

below the 10% requirement of the law or for periods outside the dates defined by the act." * * *

Here are representations made to Congress, in effect, that the deficiency described in the statute of 1883, and General Gresham's order of February 17, 1884, controlled and measured every claim allowed and that in the cases disallowed there was no deficiency. The record facts in the Department are that every allowance made was made regardless of whether there was any deficiency or not, and that thousands of the so-called disallowed claims had been stated and exhibited deficiencies in the paid salaries ranging from 10 to 75%.

Plainly the purposes intended by substituting the salaries of postmasters in specified past terms for the salaries of postmasters in the terms succeeding those specified are the results reached by this means.

When the measure which became a law on March 3, 1883, was pending before Congress the Postmaster-General on January 24, 1882, in House Executive Document, number 35, 47th Congress, first session, made the following report to Congress (top of page 4) upon that measure: "It is difficult to approximate the exact sum covered by claims which would be presented under the present bill if it became a law, but from the best data available it will not be less than from four to five million dollars."

The data the Department had upon the subject was a full record, the examination of which would necessarily show the aggregate reduction of the compensation of postmasters by the Postmaster-General between July 1, 1864, and July 1, 1874, in those cases in which the reduction exceeded 10 per cent.

On November 27, 1889, on page 36 of his annual report, the Postmaster-General notified Congress as follows: "The review of salaries of postmasters of the third, fourth, and fifth classes, under the Act of March 3, 1883, has been completed, and appropriations to pay claims thereunder have been made by Congress to the aggregate of $1,221,350."

The Postmaster-General through the Solicitor-General a few months ago in the motion to advance this case represented that the pending case, which is in its own terms a claim for the difference between the compensation paid a postmaster and what would have been paid him upon the basis of the statute of 1854, and which consequently represents every claim ever asserted by postmasters for additional compensation and every claim payable as a debt due under the Act of 1883, as that act was publicly defined by the Postmaster-General, as a test case involves about $4,000,000.

According to these reports the Postmaster-General, by the substitution system described herein, has defeated the payment of the great mass of the debts ordered paid by the statute of 1883. Manifestly it was impossible for him to scale down an aggregate of $4,000,000 to an aggregate of $1,221,350. It thus appears that the $1,221,350 applies to and covers a distinct class of claims, separate

from and apart from the debts due under the statute of 1883, and that this separate class of claims have been invoked in antagonism to the debts ordered paid by the statute of 1883. Recourse seems to have been had through this class of claims, which were wholly unknown until about the time General Gresham left office, in order to defeat the payment of the claims reported upon by the Postmaster-General to Congress on January 22, 1882, and again reported upon and accurately described by the Postmaster-General on February 17, 1884.

CONTENTION OF THE POSTMASTER-GENERAL AS NOW PRESENTED.

As is shown by the case before the Court, the Postmaster-General affirms in substance that whenever the salary paid a postmaster belonging to either the third, fourth or fifth classes, in any biennial term between July 1, 1864, and July 1, 1874, is 10 per cent. or more less than the commissions of the postmaster in the term prior the excess of the commissions of the postmaster in the term prior over the paid salary of the postmaster in the succeeding term is a debt of the United States due and payable to the postmaster in the succeeding term.

If this contention is well founded, every one of the 28,617 postmasters of these classes who, between July 1, 1864, and July 1, 1866, was paid a salary 10 per cent. or more less than the commissions at his office between July 1, 1862, and July 1, 1864, must be paid the difference between his paid salary and the commissions two years prior.

And every one of the 23,554 of these classes of postmasters who was paid a salary between July 1, 1866, and July 1, 1868, 10 per cent. or more less than the commisions at his office between July 1, 1864, and July 1, 1866, must be paid the difference between the paid salary and the commissions described. And every one of the 26,081 postmasters of these classes who was paid a salary between July 1, 1868, and July 1, 1870, 10 per cent. or more less than the commissions at his office in the two years between July 1, 1866, and July 1, 1868, must be paid the difference between his paid salary and the commissions described. And every one of the 27,970 postmasters of these classes whose paid salary between July 1, 1870, and July 1, 1872, is 10 per cent. or more less than the commissions at his office during the two years between July 1, 1868, and July 1, 1870, must be paid the difference between his paid salary and the commissions described. And every one of the 31,303 of these classes of postmasters who was paid a salary between July 1, 1872, and July 1, 1874, 10 per cent. or more less than the commissions at his office between July 1, 1870, and July 1, 1872, must be paid the difference between his paid salary and the commissions described. These payments must be made in all the cases described in which an application was made to the Postmaster-General prior to January 1, 1887.

If the Postmaster-General believes this so-called construction of

the law warranted by law there was a very broad field of action confronting him before his contention was brought before this Court by an appeal of this case from the Court of Claims.

Many written requests were addressed to him some years ago to report for payment some thousands of such cases, which he had theretofore failed to report, and which accrued in each of the four biennial terms between July 1, 1866, and July 1, 1874. If his contention is well founded each of these thousands of cases is a debt of the United States ordered by statute to be paid.

Appendix A is an illustration of the numerous calls made upon the Postmaster-General to report the cases for payment which he contends in this Court are debts ordered paid by statutes. Disregarding his contention here he turned a deaf ear to all of these calls made upon him.

The executive documents in which he has reported for payment a part of these peculiar cases show that of the thousands of such cases originating in the biennial term between July 1, 1864, and July 1, 1866, he has never permitted the report or payment of a single case.

In the next term between July 1, 1866, and July 1, 1868, out of an aggregate of these peculiar cases estimated at $823,374 (top of page 27 of my brief of April 26, 1901), he has reported and paid 9,599 cases aggregating $542,241.15. Of these cases, in the term between July 1, 1866, and July 1, 1868, there remain unreported and unpaid an estimated aggregate of $281,132.85. The aggregate of such cases reported and paid in the three terms between July 1, 1868, and July 1, 1874, is $679,108.15. If the unpaid cases in these three terms are estimated by the proportion of unpaid to paid cases between 1866 and 1868, the unreported and unpaid claims of this peculiar class between July 1, 1866, and July 1, 1874, aggregate about $645,814.30. If the aggregate of the unreported cases between July 1, 1864, and July 1, 1866, be estimated by the aggregate of the actual paid cases in the succeeding term, namely, $542,241.15, the grand total of the unreported and unpaid cases of this peculiar class may be stated to be $1,188,055.45. The Executive Documents, which show no payments of these peculiar cases between July 1, 1864, and July 1, 1866, and other payments as herein given, are as follows:

House Ex. Doc., No. 153, 48th Congress, 2d Session; House Ex. Doc., No. 70, 49th Congress, 1st Session; House Ex. Doc., No. 225, 49th Congress, 1st Session; House Ex. Doc., No. 294, 49th Congress, 1st Session; House Ex. Docs., Nos. 31 and 32, 50th Congress, 1st Session; Senate Ex. Doc., No. 253, 50th Congress, 1st Session.

The grand result of the contention of the Postmaster-General may consequently be assumed to be this: First: It denies the payment of all the claims of postmasters for additional compensation asserted continuously from a beginning in 1866 down to the period when Postmaster-General Gresham defined such claims and declared that the statute of 1883 provided for the payment of the same. Second:

It attempts to validate a great mass of bounty claims to other postmasters which were first created by this contention, which contention was originated in the seclusion of the Post Office Department about the time General Gresham left office, and which contention has since then lived in seclusion in that Department by defeating an adjudication by the courts. When the Court of Claims in this one case was able finally to exercise jurisdiction, this contention first came out into the open, and it is now before this Court for final adjudication.

The class of cases which the Postmaster-General, by his contention pays, are fully illustrated by the cases cited in my brief of April 26, 1901, on page 11, and on page 10 of that brief is an illustration of the method of denial of payment of the debts due postmasters.

The method of denial of payment of these debts, and the method of substituting therefor the payment of bounties to other postmasters is shown by one supposed case, to wit: A was postmaster at a post office during the two terms between July 1, 1864, and July 1, 1868, and he was succeeded in the third term (July 1, 1868, to July 1, 1870) by B. In the first term A's commissions and his paid salary were equal, each having amounted to $1,000. Upon A's commissions in this term of $1,000 a salary was assigned at his office on July 1, 1866, for the term ensuing of $1,000, but his receipts increased so rapidly that in his second term his commissions amounted to $2,000, but he was paid only $1,000. The office receipts fell off so rapidly that in the third term when B was postmaster they amounted to only $1,000, and the Postmaster-General by timely and frequent reassignment of salary during B's term, authorized thereto by the second section of the statute of July 1, 1864, and by postal regulations, sections 474, 475, and 476, prevented any overpayment of compensation to B so that for the whole term of B his salary was $1,000, and his commissions were $1,000. The Postmaster-General considered these cases under the statute of March 3, 1883, and applying his contention in place of the law, denied payment of any part of the $1,000 deficiency in A's compensation in the second term, this by substituting the commissions of $1,000 in A's first term for his $2,000 commissions in his second term, and he paid B a bounty of $1,000 in his term of service by substituting A's commissions of $2,000 in the second term for B's commissions of $1,000 in the third term.

This contention, if successful in this Court, will accomplish the denial of payment of deficiencies in the compensation of postmasters aggregating $2,500,000, claims for which are now pending in the Court of Claims, and it will accomplish the payment of bounties to other postmasters the aggregate of which is estimated at $2,000,000.

Such is the issue brought to this Court for final determination at the instance of the Postmaster-General.

Consideration of the Statutes.

To uphold and enforce the contention of the Postmaster-General four statutes are invoked in the brief for the United States:

First. The statute of June 22, 1854 (10 Stat., c. 61, p. 298).

Second. The statute of July 1, 1864 (13 Stat., c. 197, p. 335).

Third. The statute of June 12, 1866 (14 Stat., c. 114, p. 60, sec. 8).

Fourth. The statute of March 3, 1883 (22 Stat., c. 119, p. 487).

As to the statutes compensating postmasters in force during 90 out of the 100 years in which postmasters have served the United States, it is simply impossible to create any doubt or uncertainty as to the intent and meaning thereof. These statutes were always framed in the plainest language, so that every postmaster without liability to err could pay himself out of the office receipts, authorized thereto by law. No hindrance could be interposed to such self-payment by the Postmaster-General. This describes all such statutes in force prior to July 1, 1864, and after July 1, 1874.

Under such circumstances and conditions it might be supposed to be impossible to misinterpret the statute of July 1, 1864, the statute of June 12, 1866, or the statute of March 3, 1883, each and all of which statutes in terms referred back to the statute of 1854, which in its own terms makes impossible any error as to its intent.

To exclude from consideration the statute of 1854 in discussing the three succeeding statutes mentioned is in effect to exclude the sole statutory foundation upon which the three later statutes were constructed.

The statute of 1854 presents eight separate varying units of compensation in each biennial term, the amount of each unit being dependent upon and determined by the receipts of each quarter. By the Act of 1864 the total of these eight units was made to determine the compensation to be assigned to the post office at the beginning of the next two years. The condition of each of these assignments, intended by the lawmakers, was the continuance of receipts during the two years ensuing substantially the same as the receipts in the two years prior.

Assuming a continuance in a great number of cases of the volume of receipts without material change, the Postmaster-General, in his administration of the statute of July 1, 1864, would assign salaries at such post offices substantially the same as the postmasters would receive if paid under the Act of 1854, and such compensation would neither be materially decreased below the standard of the statute of 1854, nor materially increased above that standard. To meet the requirement of the statute of 1854 as a measure of compensation of postmasters in the administration of the statute of 1864 in all those cases of receipts greatly varying in amount, before or after the assignment at the beginning of the term, authority was given to the Postmaster-General in the second section of the statute to change the salary during the term into as many varying units as was necessary to

prevent overpayment or under payment of the postmaster, tested by the standard of the statute of 1854.

Congress did not by the statute of 1864 decrease the compensation of postmasters below the standard of 1854, but on the contrary made it the duty of the Postmaster-General in the administration of the statute of 1864 to continue and maintain in the form of salaries the compensation of postmasters on the basis of the statute of 1854. The Postmaster-General by postal regulations assured Congress and the postmasters that this was the intent of the statute of 1864, and that it would be carried into effect in his administration of the law. Plainly the Postmaster-General and not Congress was responsible for the great cut he made in the compensation of postmasters by which it is said that he reduced their compensation $4,000,000. Every act of the Postmaster-General by which this was done was a reprehensible act. In its very beginning it brought out the emphatic protests of Congress and the postmasters. But the Postmaster-General had the advantage of both Congress and the postmasters because the statute of 1864 was so framed that no postmaster could receive a dollar of pay beyond the sum ordered paid by him, and when he had accomplished reductions in pay, by omitting the reassignments of salaries provided for, the amount of the reductions could not be recovered by the postmasters, because in terms the statute of 1864 prohibited any readjustment of a postmaster's salary. The word "readjustment" is here used in its proper sense, meaning as it does a change by increase of a deficient paid salary of a postmaster in a term ended. As the statute of July 1, 1864, stood, there could be no possible remedy in any such case except by and through a remedial statute which should authorize the Postmaster-General to readjust the paid salary of the postmasters in such cases of deficiency at the end of the term in which the deficiency appeared. This was the only possible remedy so long as the statute of July 1, 1864, remained in force.

It was under these circumstances and conditions that Congress enacted the remedial statute of June 12, 1866, section 8.

Upon the face of this statute considered together with the statute of July 1, 1864, and considering the terms of each statute, it is manifest that the statute of 1866 did not and could not authorize a single assignment or reassignment of a salary at any post office not provided for and authorized by the statute of 1864. The statute of 1864 authorized and secured an assignment of salary at every post-office in the United States at the beginning of every biennial term. All these assignments appear in the Official Registers. That statute also authorized reassignments of salaries at the beginning of each quarter within the term if the Postmaster-General saw fit to so act.

Manifestly every statement made that the statute of 1866 provided for an assignment of salaries for future terms refutes itself.

There would seem to be no alternative. The statute of 1866, an important remedial statute, must be transformed into an absolute nullity, or it must be conceded that it authorized at the end of a

term the return of the compensation of which the postmaster was deprived during the term, by the administration by the Postmaster-General of the statute of July 1, 1864.

Although the terms of the statute of 1866 and the sole reason of its enactment show that its only intent and purpose was to authorize and secure the return of the compensation of postmasters at the end of biennial terms which was lost by the assignment of salaries at post offices for future terms, in the administration of the statute of July 1, 1864, yet this statute has always been regarded and treated by the Postmaster-General as not mandatory upon him, but he has exercised authority to make such returns of lost compensation.

On June 9, 1883, following the enactment of the statute of March 3, 1883, the Postmaster-General made public his construction of the statute of 1866 in the following words after quoting the statute:

"There is no attempt in this section to change the settled rule of biennial readjustments. It requires simply that when the quarterly returns at offices of the third, fourth and fifth class show that the salary allowed upon the average annual compensation of postmasters for the two next preceding years is 10 per cent. less than it would be on the basis of the Act of 1854 (which basis is the actual quarterly returns themselves), then the Postmaster-General shall adjust upon the quarterly returns.

"The substitution of a salary for two years by the Act of July 1, 1864, based upon the average returns for two years, in place of commissions upon each quarterly return, was not abandoned by the amendment, but it was provided that where the effect of taking the average of annual compensation of postmasters for the two years preceding was to reduce the compensation of the postmasters 10 per cent. below what it would be by using the eight preceding quarterly returns themselves as a basis, the postmaster at such office belonging either to the third, fourth or fifth class, should have the adjustment upon the actual quarterly returns.

"This construction leaves in full force the policy inaugurated by the Act of July 1, 1864, of paying salaries to postmasters which are fixed for a period of two years in advance, the amendment simply providing that all postmasters of the third, fourth and fifth class whose compensation was thus reduced 10 per cent. or more below what they would have received under the Act of 1854 shall have their salaries readjusted and fixed upon the basis of the latter act." * * * "It was not the intention of Congress by the amendment of 1866 to repeal any part of the statute of 1854. The latter statute was to stand, the amendment simply securing to officers of the designated classes the right to have their biennial adjustment of salary made upon the basis of the Act of 1854 instead of the Act of 1864 whenever they could save 10 per cent. by this course.

"If, in fact, there are cases in which it appeared from the quarterly returns, or from sworn reports of receipts and business, that postmasters of the third, fourth and fifth class, at the biennial readjustment, had their salaries fixed under the Act of 1864, when

by an adjustment under the Act of 1854 10 per cent. or more would have been added to their salaries, then, under the Act of 1883, such postmasters are entitled to whatever additional sum they would and should have received under the Act of 1854."

This construction of the statute of 1866 is in the record of this case on pages 10 and 11. It is the only construction of the statute of 1866 promulgated by the Postmaster-General, and refutes absolutely every statement made in support of the contention of the Postmaster-General before this Court as to the construction of that act by the Postmaster-General. It presents the one and only mode for the readjustment of postmaster's salaries which can be attributed to that statute. When the law makers in the statute of March 3, 1883, directed the Postmaster-General to readjust the salaries of postmasters "in accordance with the mode presented in section 8 of the Act of June 12, 1866," the mode intended by Congress in that act was the mode and the only mode officially promulgated by the Postmaster-General as the mode presented by the statute of 1866. Under these conditions it would seem to be impossible to deny that this is the plain meaning of the phrase referred to in the statute of March 3, 1883. Beyond all doubt this is the one and only meaning in the mind of Congress when the statute of 1883 was enacted. And this public construction by the Postmaster-General of the statute of 1866 settles the meaning of the other phrase in the statute of 1883, directing the readjustment to be made of salaries in all cases where such salaries "have not heretofore been readjusted under the terms of section 8 of the Act of June 12, 1866." No salary could be readjusted under the Act of 1866 without removing by the readjustment the deficiency in the paid salary. If that deficiency remained when the Act of 1883 was passed, its removal was ordered by the statute of 1883, if the postmaster made application for its removal.

The brief for the United States in support of the contention of the Postmaster-General seems to rely mainly upon the assumption that the statute of 1866 presented no mode for the readjustment of salaries of postmasters. Plainly, no readjustment of a postmaster's salary is possible except by changing the paid salary of a past term by increase so as to equal the compensation prescribed by the statute of 1854. The brief is understood to deny that any such change of salary was authorized by the statute of 1866, and it is understood to affirm that it authorized only assignments of salaries at the beginning of biennial terms for the terms ensuing. This argument necessarily assumes that the statute of 1866 is an absolute nullity, because the prior statute of July 1, 1864, contained the identical authority attributed to the latter statute of 1866. The argument is manifestly absurd.

But support of this argument is sought by citing the decision of this Court in the McLean case, 95 U. S., p. 763.

That case was decisively determined by this Court against McLean upon the one question of law, namely, "that after a salary

of a postmaster has been fixed a readjustment by the Postmaster-General must be made before it can be increased."

That decision of this Court was decisive against McLean and the question as to whether the statute of 1866 repeated the authority contained in the statute of July 1, 1864, to make assignments of salaries at post offices for future terms, could not and did not, as it would seem, affect the decision of the Court. The Court added these words to the decision which was decisive of the McLean case, namely, "and the readjustment takes effect in all cases prospectably."

Whether the Court, in using these words, had in mind the statute of 1866 or only the statute of 1864 does not appear. Applied to the statute of 1864, the remark was undoubtedly without error, but as stated, applied to the statute of 1866, it would convert an important remedial statute into an absolute nullity.

In the case of the U. S. *ex rel.* McLean *vs.* William F. Vilas, Postmaster-General, in 124 U. S., pp. 86–97, the statutes of 1864, 1866 and 1883 were discussed with regard to their requirement as to salaries of postmasters, and this Court decided a question of law which was decisive of that case as follows, viz, "Upon a very careful examination of these statutes we are forced to the conclusion that the legislature in these enactments did not contemplate a readjustment of the salaries of any of these officers oftener than once in two years as a legal duty or obligation upon the part of the Postmaster-General."

Thus this Court has determined that the action required of the Postmaster-General by the statute of 1866 is action once in two years only. To affirm that the action required by this statute once in two years is the assignment at the beginning of biennial terms of salaries at post offices is to transform a statute enacted as a remedy for wrong into a nullity. To affirm that the action required of the Postmaster-General by the statute of 1866 is the readjustment of a deficient salary of a postmaster in a term of two years, at the expiration of the two years, is to give full and complete effect to that statute, as did the Postmaster-General in his public construction of that statute on June 9, 1883.

No argument in this Court in support of the contention of the Postmaster-General can be based upon the assumption that the statute of 1866 was rendered null and void by executive or judicial action. When in 1883 in the statute of that date Congress referred back to the remedial statute of 1866 reference was made to a statute by which Congress originally gave authority to restore to postmasters that part of their compensation of 10 per cent. or more, which was lost in biennial terms of service in the assignment of salaries for future terms by the Postmaster-General, authorized thereto by the statute of 1864. The mode presented by Congress in that statute for carrying into effect the prescribed remedy can neither be ignored by the executive or by the courts. When Congress passed the statute of 1883, if there had been before that any ground for doubt as to the intent and meaning of the statute of 1866, it was

removed by the statute of 1883, for in 1883 an order of Congress to readjust salaries of postmasters between July 1, 1864, and July 1, 1874, cannot be misconstrued by the executive or the court. There is but one possible construction to an order of Congress enacted under such conditions. The primary condition was that the statute of 1866 by which the Postmaster-General was authorized to restore compensation taken from postmasters had not been complied with, for it had been treated by the Postmaster-General as not mandatory upon him, and he had only restored compensation in such cases when he elected to do so. The fact that the order of 1883 referred back to terms of service of postmasters between 1864 and 1874 is absolutely conclusive of its intent, independent of the light derived from the statute of 1866 upon the subject. The order of 1883 made it obligatory upon the Postmaster-General to state the account of each postmaster within the terms of that act on the eight returns included within the biennial term in which the paid salary was 10 per cent. or more less than the amount of the commissions. No other account could be stated by authority of that statute, and referring back to the statute of 1866 and to the terms of the statute of 1883 every such readjustment and increase of salary of a postmaster could only be made as of the date of the close of the term. No action could be taken on a part of the eight returns at the beginning of the term or later, and only action is authorized by the statute upon all the returns, and this could not be had until the close of the term.

Congress in 1866 had the undoubted power to order the change by increase of certain deficient salaries of postmasters, and by proviso or otherwise to embody that order in any part of the statute of 1864. The fact that without the incorporation of this proviso in section 2 of the statute of 1864, that statute provided for and authorized only the assignment and reassignment of salaries at post offices for future terms, cannot be invoked to render nugatory the order of Congress contained in the statute. The statute of 1864 with the amendment of 1866 gave the Postmaster-General authority to establish for future terms salaries at all post offices. While this authority referred back to the statute of 1854 as the proper measure of the salary to be assigned and reassigned, there was no superior authority embodied in the statute by which the action of the Postmaster-General could be controlled. Upon the enactment of the amendment of 1866 he had authority to correct by increase of compensation, at the end of each term, for the term ending, the loss of compensation of 10 per cent. or more caused by the assignment of salaries for future terms. In considering the mode of readjusting postmasters' salaries presented by the statute of 1866 it is unnecessary to discuss the question as to whether compliance with that statute was mandatory upon the part of the Postmaster-General. It is believed to be undeniable that the Postmaster-General had authority to make such readjustments under that statute.

The argument in the brief for the Government in support of the

contention of the Postmaster General, after assuming that the statute of 1866 provided for the same so-called readjustments of salaries which were authorized by the statute of 1864, seems to base the final argument in support of that contention upon the words in the body of the statute of 1883 which read as follows: "and to date from the beginning of the quarter succeeding that in which such sworn returns of receipts and business or quarterly returns were made."

So far as the argument based on these words can be understood, it seems to be affirmed that they deny any readjustment of a postmaster's salary in a term in which the paid salary is 10 per cent. or more less than the commissions of the postmaster in that term, and carry forward to the postmaster in the next term for his benefit the readjusted salary of the postmaster in the prior term. This result can only be accomplished by ignoring and setting aside the basis upon which the statute is constructed, namely, the existence of a deficiency in the paid salary of the postmaster in the first term, and in like manner ignoring wholly whether there is any deficiency in the salary of the postmaster to whom the readjusted salary in the first term is transferred. This argument is in support of a complete subversion of the statutes.

When Congress enacted the remedial statute of March 3, 1883, that body had the right and the power to determine for itself and to so state at what date the increased salary or right accrued to the postmaster. In this determination that body ruled that in case of every deficiency described, the postmaster had a right under the statute of 1866 to the increased salary immediately following the close of the term in which the deficiency occurred. No other effect can be given to the quoted words, without transforming bounties of postmasters aggregating $2,000,000 into debts due and payable under the statute which limits such payments to deficiencies in the compensation of postmasters described in the statutes. And if these results are reached by such an argument, every construction of the statute of 1883 made public by the Postmaster-General will be set at defiance.

CONSTRUCTION AND EFFECT TO BE GIVEN THE STATUTES CITED.

"In construing a statute, aid may be derived from attention to the state of things as it appeared to the legislature when the statute was enacted." (Platt *vs.* Union Pacific R. R. Co., 99 U. S., 48.)

"In whatever language a statute may be framed, its purposes and its constitutional validity must be determined by its natural and reasonable effect." (Henderson *vs.* Wickhan, 92 U. S., 259.)

"All laws should receive a sensible construction. General terms should be so limited in their application as not to lead to injustice, oppression, or an absurd consequence. It will always, therefore, be presumed that the legislature intended exceptions to its language which would avoid results of this character. The reason of the law, in such cases, should prevail over the letter." (United States *vs.* Kirby, 7 Wall., 482.)

Every technical rule as to the construction or force of particular terms must yield to the clear expression of the paramounted will of the legislature. (Wilkinson *vs.* Leland, 2 Pet., 627.)

Where the meaning of a statute is doubtful, the reason and purpose of the act may be considered. (Smythe *vs.* Fiske, 23 Wall., 374.)

The spirit as well as the letter of a statute must be respected; and where the whole context of the law demonstrates a particular intent in the legislature to effect a certain object, some degree of implication may be called in to aid the intent. (Durousseau *vs.* United States, 6 Cranch, 307.)

If diverse statutes relate to the same thing, they ought all to be taken into consideration in construing any one of them. (United States *vs.* Freeman, 3 How., 556)

A remedial statute is to be liberally construed with reference to the purpose of its enactment. (Bechtel *vs.* United States, 101 U. S., 597.)

When a right has arisen on a contract or a transaction in the nature of a contract authorized by a statute, and has been so far perfected that nothing remains to be done by the party asserting it, the repeal of the statute does not affect it or an action for its imposition. (Pacific Mail Steamship Co. *vs.* Jolieffe, 2 Wall., 450.)

For the sure and true interpretation of all statutes in general (be they penal or beneficial, restrictive or enlarging of the common law) four things are to be discussed and considered.

1. What was the common law before the making of the act? 2. What was the mischief and defect for which the common law did not provide? 3. What remedy the Parliament hath resolved and appointed to cure the disease of the Commonwealth? 4. The true reason of the remedy. And then the office of all the judges is always to make such construction as shall suppress the mischief and advance the remedy, and to suppress subtle inventions and evasions for the continuance of the mischief. (Heyden's case, 3 Co., 7; 1 Bl. Com., 61, 87.)

Proviso of the Act of August 4, 1886.

(24 Stat., c. 903, p. 307, sec. 8.)

Following the public construction of the statute of March 3, 1883, on February 17, 1884, on November 20, 1884, in his annual report to Congress, on page 20, the Postmaster-General reported to Congress that "Under the Act of Congress approved March 3, 1883, the aggregate additional amount found due to postmasters and ex-postmasters to the present time is $158,447.73."

On page 71 of that report is the following: "In addition to the the regular duty of the division (salary and allowance division) as hereinbefore stated, on April 7, 1884, under the order of the Postmaster-General, the work of reviewing and readjusting the salaries of postmasters at offices of the third, fourth and fifth classes, under the

Act of Congress, approved March 3, 1883, for the decade from July 1, 1864, to July 1, 1874, was assigned to it."

The following are extracts from the report of the Postmaster-General of November 26, 1887, from page 36 of that report:

"The readjustment of postmasters' salaries of the third, fourth and fifth classes of the Act of 1864 for the ten years ending June 30, 1874, as required by the Act of 1883, has been pushed with all the force of the department assignable to this duty. * * * The total number of claims already reviewed was 54,453, of which 21,573 have been allowed, and a total amount of such allowances is $1,000,966.66."

In the annual report of the Postmaster-General of November 28, 1888, on page 4, he reports the review of salaries under the Act of March 3, 1883, as numbering 68,725.

Thus it is officially shown that every readjustment of salary of a postmaster reported by the Postmaster-General was made under the Act of March 3, 1883.

What then is the purpose of the Postmaster-General in presenting to this Court to sustain his contention the proviso mentioned?

In Senate Executive Document, number 189, 49th Congress, first session, and on June 24, 1886, the Postmaster-General officially reported to Congress that the aggregate of readjustments of salaries under the Act of March 3, 1883, at that date was $603,952.03. This report was made one month and eleven days before the proviso of the Act of August 4, 1886, was enacted.

Manifestly the only authority that ever existed for these readjustments of postmasters' salaries was the statute of 1866 and the statute of March 3, 1883. The public construction of the statute of 1883 by the Postmaster-General on February 17, 1884, was, if warranted by law, binding on the Postmaster-General, and could neither be ignored nor set aside. It was neither revoked nor superseded by any subsequent different statement of the law by the Postmaster-General, of which there is any record.

And yet the Postmaster-General, in his letter to the Senate in response to a resolution of the Senate of June 18, 1886, in said Senate Document, number 189, makes use of the following most startling language:

"I respectfully beg leave to add that the interpretation of the Act of 1883 has been a subject of contention between this Department and a person claiming to represent as agent or attorney some postmasters who have made claims for additional compensation under that Act. This contention arose in 1883 under the administration of the Department by Postmaster-General Gresham. With the concurrence of the Attorney-General of the United States at that time, Postmaster-General Gresham determined that the duty of the Department was to make readjustments which, under the requirements of the Act of June 12, 1866, might, or should have been made from time to time, and in the same manner in which they were required to have been made under the Act of July 1, 1864,

Upon this theory the adjustments were made for which the two appropriations that have been disbursed were provided by Congress. It is contended, however, that the interpretation so given to the Act is not in accordance with its true intentions. If another construction shall be placed upon that Act by the courts, or by the Congress, the readjustments which have been made ARE NECESSARILY ERRONEOUS, AND THE AMOUNTS FOUND DUE UNDER THIS RULE OF CONSTRUCTION DO NOT CORRECTLY EXPRESS THE OBLIGATIONS OF THE UNITED STATES, NOR ARE THEY AWARDED TO THE PROPER PERSONS, IN VERY MANY INSTANCES AT LEAST." * * *

The construction of the statute of 1883 attributed to Postmaster-General Gresham is refuted absolutely by the record of his construction on pages 10, 11 and 12 of the record of this case.

And the construction attributed to the Attorney-General is refuted absolutely by the text of his construction which appears in Senate Ex. Doc., number 110, 48th Congress, first session.

It thus appears very plainly that the proviso of section 8 of the statute of August 4, 1886, was obtained by impressing upon Congress that there was a contention in regard to the official construction of the law by Postmaster-General Gresham, which appears as Exhibit A in Senate Ex. Doc. 146, 49th Congress, first session.

The only contention that ever existed as to this official construction of the law was the insistence of the attorney for the postmasters that deficiencies in salaries should not only be paid where the eight returns of the term showed the deficiencies in pay for the whole term, but should also be paid to the postmasters at offices newly established during a biennial term, where only a part of the eight returns of a whole term existed. This contention for the postmasters, as to those not covered by the public construction of the law by General Gresham, was settled adversely by this Court in 124 U. S.

To invoke here, in support of the contention, the proviso of section 8 of the Act of August 4, 1886, under the conditions shown, discloses grave doubts as to whether that contention finds support in the assumed nullification of the remedial statute of June 12, 1866, section 8, by the concurrent action of the Executive of the Department and the Courts, and in the assumed subversion of the statute of March 3, 1883, by the payment of bounties to certain postmasters, in avoidance of the payment of deficiencies in the salaries of other postmasters, this upon the ground that the legislature in the statute of 1883 put into that statute the provision affirming the dates of readjustment ordered to be properly as of the dates immediately following the expiration of the terms in which the deficiencies of salaries appeared.

This effort to have the proviso of section 8 of the statute of 1886 determine the intent of the unrepealed statute of 1883, is made with the knowledge that the courts have never abdicated the exercise of judicial functions to the Legislature, but have always proceeded to the judicial determination of the meaning of contracts

whenever such cases were brought before them and which were within their jurisdiction.

In considering a statute such as this, courts carry as far as may be an intendment that it does not propose to interfere with operations of the judicial power, it being of course only that sort of power which can decide *in invitum* upon the meaning of any *existing contract*, including therein such contemporary remedial statutes as by constitutional principles make part of it.

It is submitted, therefore, that the statute of 1886 does not mean that upon an application *to a court* which at the time of the enactment of the statute of 1883 was a due constitutional method for procuring a declaration of its meaning, that court should be bound by the interpretation therein given to the Act of 1883; but only that in the absence of such a judicial declaration, and to quiet whatever apprehensions the officers engaged in administering the statute might have, either of public or private responsibility, Congress would adopt their construction for the future as well as past, and would give them whatever advantage there might be in a statutory declaration of personal immunity from any existing liability in that connection to private suit. The general words "disallow," "bar," etc., constitute a provisional, *ad interim* rule as to the meaning of a contract, given by the *legislature* to the *executive* until the *judiciary* could be heard from. Incidentally, thereby, the defendant would be rid of the importunities of such applicants as denied the propriety of its rule of action, and these would be referred to the *courts* for any final determination that might be desired.

By general laws the United States acknowledges complete liability upon its contracts as the same by judicial methods of interpretation may be defined—it repudiates neither its obligations nor its liability to ordinary remedies thereupon.

The above special statute, therefore, will not be construed as a departure from this wise policy. It does not forbid remedies otherwise competent against the United States upon the claims in question.

The Action of the Postmaster-General Tested by Law.

Where the law requires a misisterial act to be done by a public officer, and he neglects or refuses to do such act, he is liable in damages to the party injured. Mistake or honest intention will not excuse him. (Amy *vs.* Barkholder (Amy *vs.* The Supervisors), 11 Wall., 136; South *vs.* Maryland, 18 How. 396.)

An officer cannot be said to have acted under color of a law which gave neither him nor any other person authority to do the act in question. (United States *vs.* Tweed ("Tweed's Case"), 16 Wall., 554.)

"There is a clear distinction between actions to compel the officers of a State, by affirmative official action, to perform an obligation of the State, and actions against defendants who, while

claiming to act as officers of the State, violate and *invade* the personal and property *rights of individuals, under cover of authority* which is unconstitutional and void. In the latter case they are not sued as or because they are officers of the government, *but as individuals;* and the court is not ousted of jurisdiction because they assert authority as such officers. To make out their defence, they must show that their authority was sufficient in law to protect them." (Hagood *vs.* Southern, 117 U. S., 52; Poindexter *vs.* Greenhow, 114 U. S., 270.)

The duty laid upon the Postmaster-General by the statute of March 3, 1883, as publicly defined by him on February 17, 1884, is manifestly purely a ministerial duty because as defined it simply requires him to ascertain and report from the registered returns of postmasters the excess of commissions in biennial terms over the paid salaries.

By his own report of the law, if it be without error, he is liable in suits for damages in all such cases which he has failed to report where applications were made within the time limited by law.

But in this Court the contention of the Postmaster-General is that the law requires the payment of the excesses of the commissions in terms of postmasters over the paid salaries of postmasters in the succeeding terms. If this contention is justified by law, it also describes duties purely ministerial, and in all such cases where the postmasters applied and the Postmaster-General has failed or refused to report the same he as an individual is liable in damages for his failure to perform such ministerial duties.

Upon the law the decision of this controversy is as important to the Postmaster-General as an individual, as it is to the United States or to the postmasters whose accounts are denied payment.

As to Retrospective Readjustments.

Commenting under this head upon the construction put by this Court upon the statute of March 3, 1883, in 124 U. S., pp. 86–97, in the words following, viz: "Acting upon this suggestion, and under the Act of Congress of March 3, 1883, which authorized and directed the Postmaster-General in proper cases to make readjustments of salaries, which should act retrospectively, Mr. McLean made," etc., and upon a paragraph of the decision of this Court in 164 U. S., p. 213, which reads as follows: "It was not till 1883 that the Postmaster-General was authorized to readjust the compensation of postmasters and to make such readjustments retrospective," the brief for the Government on page 18 proceeds to remark: "It is incredible that this Court should have rendered so important a decision as the establishment of a new rule for the readjustment of salaries of postmasters, without having the question in any sense before the Court, without any decision of the question by counsel for either side, without any analysis by the Court, and within the limits of a brief paragraph.

"Whilst this question has never before been squarely before this Court, it was incidentally raised in the case of McLean *vs.* Vilas (supra), and so far as any intimation at all was given therein it was in approbation of the rule of readjustment which has heretofore obtained in the Post Office Department."

These comments disclose fatal errors as to the meaning and intent of the statute of July 1, 1864, and the later statute of March 3, 1883. The action devolved upon the Postmaster-General as duties by the statute of July 1, 1864, cannot be substituted for the action devolved upon him as duties by the statute of March 3, 1883, nor can the action devolved upon him as duties by the statute of March 3,1883, be substituted for the action which was put upon him as duties by the Act of 1864. The acts required by these statutes are separate and distinct, and wholly independent, the one class of duties from the other class of duties. The acts called readjustments of postmasters' salaries in the statute of July 1, 1864, are acts which can have effect only *prospectively*, because each readjustment, so-called, fixed a salary for a term in the future at the date thereof. The readjustments of salaries prescribed by the statute of March 3, 1883, can have effect *retrospectively only*, because they fix salaries by increase of paid salaries in past terms of service, only in those cases where such increase is required because the paid salaries are 10 per cent. or more less than the standard of the increase embodied in the law. In other words, the statute of March 3, 1883, is solely a *retrospective* statute, and being so this determines absolutely the effect to be given to it. It is impossible to describe acts of the Postmaster-General provided for by the statute of 1864 and not describe acts which can take effect only for terms in the future at the date thereof, and it is equally impossible to describe acts of the Postmaster-General provided for by the statute of March 3, 1883, and not describe acts which can only take effect retrospectively. To substitute the action provided for by the statute of 1883 for the action provided for by the statute of July 1, 1864, would render nugatory the statute of 1864, and to substitute the action provided for by the statute of 1864 for the action provided for by the statute of 1883, would render null and void the latter act. In the effort to render the statute of March 3, 1883, null and void by this method, the strange spectacle is presented of creating ficticious debts of more than $2,000,000. This has been accomplished by the false assumption that the statute of July 1, 1864, in cases of decreasing receipts required the Postmaster-General when he assigned salaries at the beginning of terms on the basis of the commissions of the preceding term to continue the salaries so assigned during the whole of the ensuing term, whereas the second section of the statute of 1864 made it the great duty of the Postmaster-General to so control the assigned salaries as to prevent the over-payment of the postmasters in such cases. The determination of the Executive of the Post Office Department to defeat the statute of 1883 has been so energetic that all the power and means at command have been used to create, by abrogating

the acts of the Postmaster-General in discharging great duties years ago, fictitious debts for payment aggregating more than $2,000,000.

The contention here is to have a determination made that these fictitious debts are due and payable under the statute of 1883.

It would indeed be strange if any decisions of this Court could be found in support of this contention.

Plainly a law which orders in terms a retrospective readjustment and increase of salaries of postmasters cannot be avoided by the invocation of an obsolete statute, which during its life time provided solely for the assignment and reassignment of salaries at post offices to have effect only for future terms, terminable by a succeeding assignment by a similar method by the Postmaster-General.

Such is the anomolous result of the attempt to transform the rule of action imposed by the statute of 1864, to make opportune assignments of salaries at post offices for future terms only, into the rule of action imposed by the statute of 1883 to make changes in the salaries of postmasters in past terms only for the sole reason that the application of the rule of the statute of 1864 caused them to lose 10 per cent. or more of their earnings.

Conclusion.

This suit as a test case is to enforce, on behalf of a multitude of old-time postmasters, the payment of debts "voluntarily created by the Government" (Verdier's case) for services performed by them years ago.

The account of the debt due in the case before the Court is stated in complete conformity to the terms of the law by which it was "voluntarily created by the Government," and in complete conformity to the rule and requirement of that law as determined by and given to the public by the Postmaster-General himself.

The judgment of the Court of Claims in favor of the appellee for these reasons ought to be affirmed here.

WASHINGTON, D. C.,
October 26, 1901.

HARVEY SPALDING,
Attorney for Appellee.

APPENDIX A.

Letter to the Postmaster-General.

"WASHINGTON, D. C., *May 23, '98.*

"Hon. CHARLES EMORY SMITH,
"*Postmaster-General.*

"SIR:

"On the 3d inst. I addressed to you a communication asking your personal consideration of the recorded action of the Postmaster-General in the execution of the postmasters' readjustment salary act of March 3, 1883.

"The sole criterion in the body of that statute is a command addressed to the Postmaster-General requiring him to readjust the salaries of all applicant postmasters of the classes named in that act whose returns show the paid salary to be 10% less than the commissions prescribed by the Act of 1854.

"I furnished you with a transcript of the recorded text of every published construction of that statute by the Postmaster-General, in each of which it is affirmed by the Postmaster-General that every such postmaster by biennial readjustment by the Postmaster-General s entitled to be paid the difference between the salary actually paid him and what he would have received in commissions under the Act of 1854 had the salary act of 1864 not been enacted.

"I also called your attention to the anomalous fact that in every case reported for payment the Postmaster-General reversed every public construction of the law by him made and the sole criterion contained in the body of the statute commanding the Postmaster-General to make the readjustments of salaries specified. This reversal was accomplished by disregarding in every instance the fact as to whether there was any deficiency between the salary paid in any term and what the postmaster would have received in commissions under the Act of 1854 by arbitrarily assigning a salary in any biennial term not upon the basis of the returns made in that term, but upon the basis of the commissions of the postmaster in the prior term. This action denied every payment of every deficiency described in the statute and described in the body of the statute and accorded a payment in any term in excess of the commissions in that term so as to equal the commissions in the prior term if the commissions in that prior term exceeded the commissions in the succeeding terms. This action for years in contravention of the recorded construction of the law and in reversal thereof has been affirmed to be the law by your predecessors and the accounts have been suppressed in aid of making such action the *de facto* law controlling these cases. If this action be law it is plain that in regard to every application made prior to Jan. 1, 1887, payments must be made in execution of the *de facto* law in every case where such payments

have not been made. A large number of such cases have not been paid, payments having been prevented by the non-report of such cases by the Postmaster-General in accordance with what he now affirms and has for years affirmed the law to be.

"On the 3d inst., with the communication then made to you, I submitted a small schedule of such cases in the State of New York and also a small schedule in the State of Ohio.

"I now submit for your personal consideration a small schedule of such cases in the State of Illinois, and I respectfully request your personal action thereon. There certainly can be no good or sufficient reason for suppressing the report of debts due postmasters stated by a rule which the Postmaster-General himself affirms to be the law.

"I ask your personal consideration of cases in this schedule illustrating the rule which the Postmaster-General affirms to be the law and which illustrates the fact that while one postmaster has been paid by this rule another at the same post office, making application within the time of the law, has been denied payment. And this unjust action applies to every case which I submit for your consideration.

"Your personal consideration is invoked to the following cases included in this list:

"Bushnell, Ill. The claim of David M. Wyckhoff was presented in 1883, and of George C. McFarland on August 3, 1886, and of W. H. Heaton in 1883. W. H. Heaton was allowed on January 29, 1885, $335.10 for his services from November 1, 1866, to June 30, 1868. This salary was stated on the returns of the office between July 1, 1864, and June 30, 1866, by which the salary for two years, between July 1, 1866, and June 30, 1868, was shown to be $1,406.12 instead of $980 which had been paid, and this entitled the applicant postmasters (by the Department Rule) to $426.12 additional salary. As Heaton served from November 1, 1866, to June 30, 1868, the proportion of this $426.12, namely $355.10, was paid him. The remainder, $71.02, belonged to Wyckhoff and McFarland, who served between July 1, 1866, and October 31, 1866, and has never been paid. By what rule of justice can one postmaster be accorded pay of his readjusted salary in a biennial term and another who made application under the same law be denied payment of his readjusted salary?

"Camp Point, Ill. James Robertson applied for readjustment of his salary in July, 1884, and E. E. B. Sawyer applied on October 12, 1884. By the Department Rule the salary between July 1, 1866, and June 30, 1868, was readjusted upon the returns between July 1, 1864, and June 30, 1866, and was then found to be $1,134.06, which was $234.06 more than the salary of $900, previously paid. Mr. Sawyer has been paid $39.01, the part of $234.06 due him for his service between July 1, 1866, and October 31, 1866. The $195.05 due Jas. Robertson for his service between November 1, 1866, and June 30, 1868, has not been paid. It can-

not be that it is designedly intended to perpetrate such a high-handed outrage as it would be to accord payment to one postmaster and deny it to another, both of whom served in the same term and applied under the same law for readjustment of their salary.

"Freedom, Ill. The salary of Robert Wright and S. W. Lawrey, who applied, has been stated by the Department Rule between July 1, 1866, and June 30, 1868, at $107.60 more than was originally paid, and Mr. Lawrey's share for his one-quarter's service from April 1, 1868, to June 30, 1868, of $13.45, has also been paid, but Mr. Wright's share of the same for his services from January 1, 1867, to April 1, 1868, five quarters of $67.25 has not been paid.

"Grand Chain, Ill. George W. Bristow applied in July, 1884, and David Porter in September, 1886. By the Department Rule the salary between July 1, 1866, and June 30, 1868, is stated at $91.92, which is $83.92 increase of the salary of $8 paid for two years. Mr. Porter has received his share of $20.98 of this due him for his service from July 1, 1866, to December 31, 1866, but Mr. Bristow has received no part of his share of $62.94 due him for his service between January 1, 1867, and June 30, 1868.

"La Harpe, Ill. E. Z. Hill and William O. Coquilette applied for readjustment of their salaries, and the salary by the Department Rule between July 1, 1870, and June 30, 1872, was stated at $963.30, which is $103.30 more than the salary of $860 originally paid. Of this $103.30, $51.65 has been paid to E. Z. Hill as the share due him from July 1, 1871, to June 30, 1872, but the share of $51.65 due William C. Coquilette for his services between July 1, 1870, and June 30, 1871, has not been paid.

"Lodi Station, Ill. Solomon White made application on October 27, 1886, and E. Brown on April 7, 1886. The salary was stated by the Department Rule between July 1, 1868, and June 30, 1870, at $545.44, which is $145.44 more than the salary of $400 orginally paid. The share of $72.72 due E. Brown for his service between July 1, 1868, and June 30, 1869, has been paid, but $72.72, the share due Solomon white for his services between July 1, 1869, and June 30, 1870, has not been paid.

"Logan, Ill. Elias Pritchard made application July 2, 1886. By the Department Rule the salary between July 1, 1870, and June 30, 1872, has been stated at $78.80, which is $40.80 more than the salary of $38 originally paid; $25.50 of this due Harvey H. Adams has been paid, but the share of $15.30 due Elias Pritchard for his service between July 1, 1866, and July 1, 1867, has not been paid.

"Martinsville, Ill. H. C. Howell, Newman and Curtis applied before January 1, 1887, and the salary by the Department Rule was stated at $520, between July 1, 1866, and June 30, 1868, which is about $140 more than the salary originally paid of $380. The share of $70 due Newman and Curtis for the time between July 1, 1867, and June 30, 1868, has been paid, but the share of $70 due

Howell for the time between July 1, 1866, and July 1, 1867, has not been paid.

"Pecatonica, Ill. Frederick Brown and Thos. Hance applied for readjustment of salary prior to January 1, 1887, and the salary by the Department Rule was stated for the term between July 1, 1866, and June 30, 1868, at $1,519.07, which is $539.07 more than the salary of $980 originally paid. Of this $404.30, the share due Mr. Brown for his services between January 1, 1867, and June 30, 1868, has been paid and $27.83, the share due Thos. Hance for his service between November 24, 1866, and December 31, 1886, has been paid, but $106.94, the share due Mr. Brown for his service between July 1, 1866, and November 24, 1866, *has not been paid.*

"Pekin, Ill. Hezekiah Naylor and George Naylor presented applications in 1884 and the salary by the Department Rule was stated between July 1, 1866, and June 30, 1868, at $4,274.27, which is $474.27 more than the salary of $3,900 originally paid; $84.92 of this due Hezekiah Naylor for his services between July 1, 1866, and November 8, 1866, has been paid; $284.70, the share of this due George Naylor for his services between April 19, 1867, and June 30, 1868, *has not been paid.*

"Prairie City, Ill. James H. Wilson and Alonzo Barnes applied for readjustment of salary, one on December 9, 1884, and the other December 20, 1886. The salary between July 1, 1866, and July 1, 1868, was stated by the Department Rule at $1,456.92, which is $136.92 more than the salary of $320, originally paid; $68.46, the share due James H. Wilson for his services between July 1, 1867, and July 1, 1868, has been paid, but $55.19, the share due Alonzo Barnes for his services between July 1, 1866, and April 20, 1867, has not been paid, and $13.27, the share due J. H. Wilson for his service between April 21, 1867, and June 30, 1867, has not been paid.

"Rock Grove, Ill. A. W. Kaup applied for readjustment of his salary in 1883, and W. M. Rockey in September, 1884. The salary was stated by the Department Rule between July 1, 1866, and June 30, 1868 at $266.30, which is $68.30 more than the salary originally paid of $198; $25.61, the share of this due W. M. Rockey for his service between July 1, 1866, and March 31, 1867, has been paid, but $42.68, the share due A. W. Kaup for his services between April 1, 1867, and June 30, 1868, *has not been paid.*

"Roscoe, Ill. Caleb C. Vance applied for readjustment of salary on January 28, 1886, and A. D. Lawrence in 1884. The salary between July 1, 1866, and June 30, 1868, was stated by the Department Rule at $610.25, which is $150.25 more than the salary of $460 originally paid; $29.97 of this, the share due A. D. Lawrence for his service between July 1, 1866, and November 23, 1866, has been paid; $120.28, the share due C. C. Vance for his service between November 24, 1866, and June 30, 1868, *has not been paid.*

"Vandalia, Ill. Henry C. Fallin applied for readjustment of salary in 1883 and Hector S. Humphrey in the same year. The salary between July 1, 1868, and June 30, 1870, was stated by the

Department Rule at $2,201.44, which is $201.44 more than the salary of $2,000 originally paid; $109.11 of this, the share due Hector S. Humphrey for his service between June 1, 1869, and June 30, 1870, has been paid; $92.33, the share due Henry C. Fallin for his service between July 1, 1868, and May 31, 1869, *has not been paid.*

"Vermont, Ill. W. J. Johnson applied for readjustment of salary on October 26, 1886, and H. Kirkbride in 1884. The salary was stated by the Department Rule between July 1, 1866, and June 30, 1868, at $944.57, which is $544.57 more than the salary of $400 originally paid; $394.97, the share of this due Mr. Kirkbride, has been paid; $149.60, the share due W. J. Johnson, has not been paid.

"J. H. Evans and J. T. Hunter also applied and their salaries with Kirkbride's, by the Department Rule has been stated, between July 1, 1868, and June 30, 1870, at about $858, which is $258 more than the salary of $600 originally paid, no part of which has been paid.

"Virden, Ill. Jno. J. Beattie and R. H. Ballenger applied for readjustment of salary in October, 1884. The salary between July 1, 1868, and June 30, 1870, by the Department Rule was stated at $2,396.82, which is $516.82 more than the salary of $1,880 originally paid; $318.59 of this, the share due R. H. Ballinger for his service between April 6, 1869, and June 30, 1870, has been paid, but $198.23, the share due Jno. J. Beattie for his service between July 1, 1868, and April 6, 1869, has not been paid.

"By the cases cited I have shown you the undeniable fact that a large number of postmasters who applied for readjustment of their salaries under the Act of 1883 within the time limited by law have not been paid the salaries due them, stated by a rule which the Department affirms to be the law, and by which rule of statement an aggregate of $1,221,000 have been paid to other postmasters having precisely the same rights and no greater rights than the postmasters whose cases I have brought by citation to your personal consideration.

"Plainly these postmasters are entitled to be paid the salaries stated by the Department Rule if that rule be law as it is affirmed to be in a great number of circulars issued lately and distributed to Members of Congress.

"I have received no reply to the appeal made to you on the 3d inst. in respect to other cited cases of the same class. The Department for a term of years under the administration of your learned and able predecessors has by some unknown rule or policy seen fit to accord certain rights under a certain statute to a large number of postmasters, while at the same time the same rights under the same statute have been persistently ignored as to other postmasters.

"It certainly must be sufficient to secure an equal administration of the law without discrimination and without favoritism to

bring this conspicuous wrong to your personal attention and consideration.

"It will be manifest to you if you read the statute of 1883 that when Congress *directed* the readjustment and payment of salaries to those postmasters whose returns showed a paid salary 10 per cent. less than the commissions prescribed by the Act of 1854 no responsive obedient action of the Postmaster-General was possible but to *report back* to the Congress every deficiency in salary described in the statute where the readjustment was applied for by the postmasters within the time limited by law. This manifest truth was recognized and affirmed in the text of every construction of the law given to the public by your predecessors. Consequently no act of the Postmaster-General could have effect under the law which did not present to the Congress in each account considered the precise amount of compensation the postmaster would receive as commissions under the Act of 1854 and the precise amount of the pay the postmaster actually received under the Act of 1864. The Postmaster-General had no power under the statute to ascertain or state from the Department records for the information of the Congress any debt or any credit side of any account except the debt and credit side described in the statute. If in any account any other debt or credit has been stated to control the action of Congress such debt and credit sides so stated have not only been without warrant of law but in reversal of the plain mathematical terms of the statute of 1883.

"Can a greater responsibility of an executive officer be conceived than to state accounts to control the action of Congress so that accounts without warrant of law shall be paid and so that accounts commanded to be paid by the Congress shall not be paid.

"Can anything be plainer than this that every account stated by the Postmaster-General exhibiting the amount of salary of the postmaster by the commissions prescribed by the Act of 1854 and exhibiting a paid salary by the Act of 1864 10 per cent. or more less would be promptly paid by Congress if reported? And can anything be plainer than this that no account of a postmaster stated by the Postmaster-General and submitted to Congress exhibiting the paid salary under the Act of 1864 in excess of the salary stated under the Act of 1854 could by no possibility receive from Congress any increased payment? And yet hundreds of thousands of dollars have been secured from Congress upon such accounts by concealing from the Congress the controlling fact that the original salaries paid under the Act of 1864 were equal to or in excess of the salary stated on the basis of the Act of 1854. And this has been done in the face of the recorded accounts in your office showing these facts.

"If they have not been destroyed there are complete schedules on file in your office showing the exact debts unpaid because not reported to the Congress of Postmasters who applied for readjust-

ment of salaries prior to January 1, 1887, in the States of Alabama, Arkansas, Kansas, Kentucky and Illinois.

"Your personal consideration is invited to a copy of correspondence upon this point as follows:

"'WASHINGTON, D. C., *Feb. 8, 1897.*

'A. H. SCOTT, ESQ.,

'Dear Sir:

'A search has been inprogress for a time for the Alabama, Arkansas, Kansas, Kentucky and Illinois schedules of readjusted salaries of Postmasters stated retrospectively in accordance with the decisions of the Supreme Court.

'Do you mind stating to me or to the proper Department Officer the place where these papers were deposited when you left office?

'Respectfully,

'HARVEY SPALDING,'

'1320 F St., N. W., WASHINGTON, D. C.,

'*February 9, 1897.*

'HARVEY SPALDING, ESQ.,

'Washington, D. C.

'Dear Sir:

'Your letter of the 8th inst. received. I am sorry I cannot give you any information on the subject of the schedules to which you refer. Perhaps Mr. Kimball can. They were on 'file' when I retired, but I cannot tell where the 'reform' files have placed them.

'Respectfully,

'ALBERT H. SCOTT.'"

"I have thus brought to your personal knowledge the anomalous fact that the compensation accounts of postmasters stated as required by the statute of 1883 have been deliberately suppressed and heretofore withheld from Congress for the manifest purpose of defeating the payments of such accounts by the Congress provided for by the statute of March 3, 1883.

"I should fail in the discharge of a supreme obligation I owe to these postmasters and the law-making power as well not to make an earnest appeal to you to report to Congress every salary account of every postmaster who applied within the time limited by law stated in conformity to law.

HARVEY SPALDING."

Supreme Court of the United States.

No. 225.—October Term, 1901.

The United States, Appellant, vs. William T. Ewing. } Appeal from the Court of Claims.

[February 24, 1902.]

The Government appeals from a judgment of the Court of Claims awarding to the petitioner the sum of $1,264.83, upon a readjustment of salary for his services as postmaster at Gadsden, in the State of Alabama, between July 1, 1866, and June 30, 1874. The original petition was filed in October, 1888, in consequence of the passage of the act of March 3, 1883, (chap. 119, 22 Stat. 487,) which reads as follows:

"That the Postmaster General be, and he is hereby, authorized and directed to readjust the salaries of all postmasters and late postmasters of the third, fourth and fifth classes, under the classification provided for in the act of July 1, 1864, whose salaries have not heretofore been readjusted under the terms of section eight of the act of June 12, 1866, who made sworn returns of receipts and business for readjustment of salary to the Postmaster General, the First Assistant Postmaster General, or the Third Assistant Postmaster General, or who made quarterly returns in conformity to the then existing laws and regulations, showing that the salary allowed was ten per centum less than it would have been upon the basis of commissions under the act of 1854; such readjustments to be made in accordance with the mode presented in section 8 of the act of June 12, 1866, and to date from the beginning of the quarter succeeding that in which such sworn returns of receipts and business, or quarterly returns were made: *Provided*, That every readjustment of salary under this act shall be upon a written application signed by the postmaster or late postmaster or legal representative entitled to said readjustment; and that each payment made shall be by warrant or check on the Treasurer or some assistant treasurer of the United States, made payable to the order of said applicant, and forwarded by mail to him at the post office within whose delivery he resides, and which address shall be set forth in the application above provided for."

The petitioner claimed that by a readjustment of his salary under that act he was entitled to be paid a difference of $1,264.83 between the salary actually paid him and the amount to which he was entitled by reason of such act.

By the act of June 22, 1854, (10 Stat. 298,) Congress provided for the compensation of postmasters by allowing them commissions on the postage collected at their respective offices in each quarter of the year, and in due proportion for any period less than a quarter. The compensation awarded was as follows:

On any sum not exceeding $100, 60 per centum;

On any sum over and above $100, and not exceeding $400, 50 per centum;

On any sum over and above $400, and not exceeding $2,400, 40 per centum;

On all sums over $2,400, 15 per centum.

This method of compensation was changed by Congress by the passage of the act of July 1, 1864. (13 Stat. 335.) By that act it was provided that the annual compensation of postmasters should be at a fixed salary in lieu of commissions, the postmasters to be divided into five classes, with compensation respectively as follows:

First class to receive not more than $4,000, nor less than $3,000;

Second class to receive less than $3,000, and not less than $2,000;

Third class to receive less than $2,000, and not less than $1,000;

Fourth class to receive less than $1,000, and not less than $100;

Fifth class to receive less than $100.

The first section of the act then proceeds as follows:

"Whenever the compensation of postmasters of the several offices, (except the office of New York,) for the two consecutive years next preceding the first day of July, 1864, shall have amounted to an average annual sum not less than $3,000, such offices shall be assigned to the first class; whenever it shall have amounted to less than $3,000, but not less than $2,000, such offices shall be assigned to the second class; whenever it shall have amounted to less than $2,000, but not less than $1,000, such offices shall be assigned to the third class; whenever it shall have amounted to less than $1,000, but not less than $100, such offices shall be assigned to the fourth class; and whenever it shall have amounted to less than $100, such offices shall be assigned to the fifth class. To offices of the first, second and third classes shall be severally assigned salaries, in even hundreds of dollars, as nearly as practicable in amount the same as, but not exceeding, the average compensation of the postmasters thereof for the two years next preceding; and to offices of the fourth class shall be assigned severally salaries, in even tens of dollars, as nearly as practicable in amount the same as, but not exceeding, such average compensation for the two years next preceding; and to offices of the fifth class shall be severally assigned salaries, in even dollars, as nearly as practicable in amount the same as, but not exceeding, such average compensation for the two years next preceding. Whenever returns showing the average of annual compensation of postmasters for the two years next preceding the first day of July, 1864, shall not have been received at the Post Office Department at the time of adjustment, the same may be estimated by the Postmaster General for the purpose of adjusting the salaries of postmasters herein provided for. And it shall be the duty of the Auditor of the Treasury for the Post Office Department, to obtain from postmasters their quarterly accounts with the vouchers necessary to a correct adjustment thereof, and to report to the Postmaster General all failures of postmasters to render such returns within a proper period after the close of each quarter.

"SEC. 2. *And be it further enacted*, That the Postmaster General shall review once in two years, and in special cases, upon satisfactory representation, as much oftener as he may deem expedient, and readjust, on the basis of the preceding section, the salary assigned by him to any office; but any change made in such salary shall not take effect until the first day of the quarter next following such order, and all orders made assigning or changing salaries shall be made in writing and recorded in his ournal, and notified to the Auditor for the Post Office Department."

Subsequently by section 8 of the act of June 12, 1866, (14 Stat. 59, 60,) section 2 of the act of 1864 was amended by adding the following:

"*Provided*, That when the quarterly returns of any postmaster of the third, fourth or the fifth class show that the salary allowed is ten per centum less than it would be on the basis of commissions under the act of 1854, fixing compensation, then the Postmaster General shall review and readjust under the provisions of said section."

The Court of Claims finds that the petitioner was, as postmaster of Gadsden, Alabama, paid:

"For his services between July 1, 1866, and June 30, 1868, $73 per year, or for two years	$146 00
For his services between July 1, 1868, and June 30, 1870, at $220 per year, or for two years	440 00
For his services between July 1, 1870, and June 30, 1872, at $460 per year, or for two years,	920 00
For his services between July 1, 1872, and June 30, 1874, at $540 per year, or for two years,	1,080 00
In addition thereto since said service for the two years between July 1, 1868, and June 30, 1870, $45.95 per year, amounting for the two years to	91 90
And for the two years between July 1, 1870, and June 30, 1872, $47.50 per year, amounting for the two years to	95 00
Amounting in all to	$2,772 90

"During his first biennial term his adjusted salary was less than $100.

"During his second, third and fourth biennial terms his adjusted sulary was more than $100 and less than $1,000 per annum.

"III. He made application in writing to the Postmaster General for readjustment and payment of salary (under chapter 119 of the laws of 1883) for service as postmaster, in accordance with chapter 61 of the laws of 1854 and section 8 of chapter 114 of the laws of 1866. This he did prior to January 1, 1887. The Postmaster General thereupon stated plaintiff's account, as shown later in these findings. This statement shows that (if plaintiff be correct in his contention as to the law) his salary for the four biennial terms between July 1, 1866, and June 30, 1874, should have been $4,037.73, whereas he has been paid in all for said terms but $2,772.90; so (if he be correct) there is still due him as readjusted salary $1,264.83."

The court also sets out certain correspondence between its clerk (under its direction) and the Postmaster General in regard to papers in the Post Office Department, showing or tending to show what action, if any, had been taken by the department on request of petitioner for readjustment of

salary under the act of 1883. It does not clearly appear therefrom that Postmaster General Wanamaker, to whom the clerk addressed his communication, had readjusted the salary, but subsequently to the correspondence the Court of Claims finds, in its fifth finding, that on November 19, 1897, Postmaster General Gary certified and returned to the Court of Claims a readjustment of the petitioner's salary and documents relating to the action of the Post Office Department in this and similar cases, and the court in such fifth finding concludes thus:

"If the foregoing readjustment of Postmaster General Wanamaker is the readjustment prescribed and intended by the statutes therein referred to, there is no balance of salary remaining due the plaintiff. If the readjustment hereinafter set forth of Postmaster General Gary is the readjustment prescribed and intended by the said statutes, there remains due to the plaintiff the sum of $1,264.83."

But the court, by its conclusion of law, finds that no legal readjustment of salary was made by Postmaster General Wanamaker, and that the readjustment made by Postmaster General Gary was valid under the statute, and therefore ordered judgment for $1,264.83.

Mr. Justice PECKHAM, after stating the above facts, delivered the opinion of the Court.

The question at issue between the parties is as to the proper construction of the act of Congress approved March 3, 1883, and which is set forth in the foregoing statement of facts. It is contended, on the part of the petitioner, that when application is made to the Postmaster General for a readjustment of salary between the period from 1864 to 1874 that it is his duty, under the statute of 1883, to compare the salary which the petitioner received in each biennial period with what he would have received in commissions on the receipts of his office, as shown by the sworn returns of the receipts and business of such office, under the statute of 1854 during the same term, and if on such comparison it should appear that the salary thus allowed was ten per centum, or more, less than such commissions, then to readjust the salary for the biennial term by allowing the petitioner the difference between the salary and the commission for that particular term. This has been done by the Court of Claims in its judgment in this case.

The Government, on the other hand, contends that to do so would be a plain violation of the statute, which provides that the readjustments shall be made in accordance with the mode prescribed in section 8 of the act of June 12, 1866, and that they shall date from the beginning of the quarter succeeding that in which such sworn returns of receipts and business or quarterly returns were made. In other words, the petitioner claims that upon a comparison of the actual salary paid him in a two-year period,

with what he would have received for the same period upon the basis of commissions on the sum of the quarterly returns for that period, if the salary paid him were ten per cent less than the commissions, he was entitled to be paid the difference for that particular biennial term, whereas the Government contends that by virtue of the statute the readjustment is to date from the immediately succeeding quarter.

Going back to the statute of 1854, providing for compensation by commission, we find the act authorized the Postmaster General to allow the commissions to postmasters at the rates named therein and to be based on the postage collected at their respective offices in each quarter of the year Then came the act of July 1, 1864, providing for payment to postmasters by salary, and classifying them according to the salary received. There were five classes thus made, and they were arranged at the commencement by reference to the compensation paid to the office for the two years next preceding July 1, 1864. The second section of the act provides for a review by the Postmaster General once in two years, and a readjustment of the salaries on the basis of the preceding section, but any change made in the salary, the statute provided, should not take effect until the first of the quarter next following such order. In special cases, upon satisfactory representation, the Postmaster General might also review and readjust the salary assigned to any office as much oftener than once in two years as he might deem expedient.

Prior to this act of 1864 it will be seen that postmasters received their compensation by commission based upon each quarterly return of the amount of sales made at the particular office, but under the act of 1864, instead of compensation by commission, postmasters were to be paid under that act salaries for two years based upon the average amount of the receipts at their offices, as shown by their quarterly returns for the two years preceding the first day of July, 1864, as provided for in the act of June 22, 1854, and this salary was to be reviewed every two years.

Thus at the end of a biennial period the amount of receipts, as shown by the quarterly returns for the past two years, was taken, and upon that amount the salary for the coming two years was fixed, so that, assuming from 1864 to 1866 the amount of the quarterly receipts made a total of $2,000, that sum would be fixed upon as the salary for the two years from 1866 to 1868. It was obviously an effort to make the compensation by salary equivalent to the compensation by commissions, and this was the way in which it was to be done. It is equally obvious that a failure to attain this result would frequently occur in the practical operation of the act. The amount of the compensation by salary from 1866 to 1868, for instance, fixed by a resort to the quarterly returns for the two years preceding, would, in rapidly growing communities, fail to reach the amount of compensation which the postmasters would have received had it been fixed by commissions for those years, 1866 to 1868.

The amount of the sales of stamps might have quadrupled in those years over the amount of such sales for the period from 1864 to 1866, and yet, as the compensation for the years from 1866 to 1868 was measured by the sales from 1864 to 1866, there was no relief to be had, and the postmaster in such case would have received less salary than the amount of the compensation he would have received had he been paid by commissions on sales of stamps as under the act of 1854. Such being the obvious result of the act of 1864, the second section was amended in 1866, which amendment provided that when the salary allowed as fixed, pursuant to the provisions of the act of 1864, proved to be ten per centum less than it would have been on the basis of commissions, under the act of 1854, fixing the compensation, then in that event the Postmaster General was directed to review and readjust the salaries under the provisions of that act. And even then the readjustment would not take effect until the first day of the quarter next following the order for the same, as that is the condition of the act of 1864, which is not altered in that respect by the act of 1866. It has been held that under this statute of 1866 no action could be maintained in the Court of Claims until there had been a readjustment of the salary of the petitioner for the period for which he claimed to recover. (*United States* v. *McLean*, 95 U. S. 750.)

The quarterly returns mentioned in the act of 1866 do not refer to any one quarterly return during the biennial term. The question arose in *McLean* v. *Vilas*, (124 U. S. 86,) when, referring to the amendment of 1866 to the act of 1864, the court, through Mr. Justice Miller, said: "What quarterly returns are here meant, as showing that the salary is ten per cent less than the commissions under the act of 1854? The argument of counsel is, that when one quarterly return shall show this condition of affairs, the Postmaster General, on the request of the postmaster, must make a readjustment, but such is not the language of the statute. The expression used is 'when the quarterly returns' shall show this, and inasmuch as the law had already established that readjustments must be made on the basis of the quarterly returns for two years, it is reasonable to suppose that that was the meaning of Congress in this proviso."

Under such a construction, the readjustment could not be had until eight quarterly returns of the biennial period had been made, so that it would appear therefrom that the salary allowed during that term was at least ten per centum less than it would have been, if fixed on the basis of commissions under the act of 1854, in which case the Postmaster General was directed to review and readjust salaries under the provisions of said section, but the change was not to take effect until the first day of the quarter next following such order of the Postmaster General. Then comes the act of 1883, which also provides for a case for readjustment of salary where sworn returns of receipts and business have been made, or where

quarterly returns, in conformity to the then existing regulations, have been made, showing that the salary allowed was ten per centum less than it would have been upon the basis of commissions under the act of 1854. In such case the Postmaster General was authorized and directed to readjust those salaries in accordance with the mode prescribed in section 8 of the act of June 12, 1866, already referred to.

The sworn quarterly returns referred to in the act of 1883 are those contained in the biennial period, and the act does not refer to one return alone, any more than did the act of 1866. Having stated the circumstances in which a readjustment could be had, the act of 1883 proceeded to state from what period such readjustment should take effect, and it stated that it was "to date from the beginning of the quarter succeeding that in which such sworn returns of receipts and business or quarterly returns were made." This language is plain and unambiguous, and the court is bound by its terms. The readjustment cannot take effect in the same term for which the sworn returns were reviewed. It is postponed to the beginning of the next quarter.

It is said that as thus construed the statute leads in many cases to great injustice, and hence such construction should not be adopted. The difficulty is that any other construction violates the clear directions of the law, and although the result may be to withhold its benefits from some who might be regarded as otherwise entitled to it, yet we cannot for that reason alter its terms so as to include them, and thus ourselves enact instead of construing the law.

In United States v. *Verdier*, (164 U. S. 213, 219,) it was held that the act of 1883 created an indebtedness voluntarily assumed by the Government in regard to those who claimed under its provisions. It rested entirely with Congress to say who should have its benefits and how the same should be arrived at, and from what date the readjustment should take effect, and as Congress has plainly stated the date there is nothing for the court to do but follow the clear direction of the statute. If Congress had intended to provide for the readjustment taking effect at the commencement of a biennial term subsequent to that in which the quarterly returns were made upon which the compensation was fixed, we are at a loss to think of what language it could use which would more certainly and specifically prove that intention than does the language actually used in this statute.

The method of reviewing and readjusting the salaries of postmasters under the act of 1883 with reference to the acts of 1864 and 1866, pursued by the Post Office Department, by which the readjustments based upon the quarterly returns have been made prospectively for the next biennial term thereafter, was approved by Congress as a correct administration of the act of March 3, 1883, and the readjustments which had been made

under that act and in that method by the department, were ratified as a correct disposition of the claims which had been considered and disposed of, and Congress enacted that in considering all claims not yet readjusted the same method thus approved by it should be pursued, and it directed that any and every different method of readjustment of salaries during the period between 1864 and 1874 should be prohibited. (24 Stat. 256, 307, sec. 8; act approved August 4, 1886.) When this act was passed the salary of the petitioner had not been readjusted.

While the declaration of Congress in the act of 1886, approving the construction which had been put upon the act of 1883 by the Post Office Department, and ratifying its method of reviewing and readjusting salaries under that act, could have no binding force upon the courts as to the proper construction of that act in cases of salaries already readjusted, yet its direction, "that in considering all claims not yet readjusted, the same method shall be pursued which is hereby approved; and any and every different method of readjustment of salaries of such postmasters and late postmasters during the period between July 1, 1864, and July 1, 1874, than is herein approved, is hereby prohibited," is a valid legislative enactment and must be followed by the courts. The readjustment of the salary of petitioner has not been according to this direction.

Construing the acts of 1883 and 1886 as we think their terms require, the judgment of the Court of Claims is erroneous, and must be reversed and the case remanded to that court with instructions to enter a judgment in conformity to the directions of those statutes and the opinion of this court.

We feel called upon to say that the charges of misconduct, maladministration and fraud against the officers of the Post Office Department, so freely scattered through the pages of the briefs of counsel for appellee, are entirely unwarranted by anything contained in the record before us, and ought not to have been made.

Reversed.

Mr. Justice McKENNA did not sit in this case and took no part in its decision.

True copy.

Test:

Clerk Supreme Court, U. S.